

*United States Court of Appeals
for the Second Circuit*



APPENDIX

NO. 74-4264

United States Court of Appeals
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

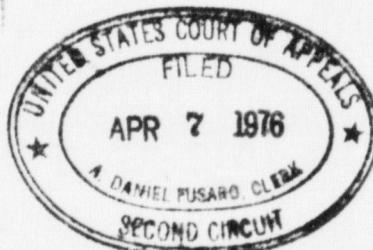
POLLACK ELECTRIC COMPANY, INC.,

Respondent.

On Application for Enforcement of an Order of
The National Labor Relations Board

B
P/S

APPENDIX



ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

PAGINATION AS IN ORIGINAL COPY

INDEX

	Page	
CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES	1	
DECISION		
Dated April 21, 1975	2	
DECISION, ORDER, AND DIRECTION		
Dated August 25, 1975	26	
GENERAL COUNSEL'S EXHIBIT NO. 1(q)	31	
GENERAL COUNSEL'S EXHIBIT NO. 1(r)	35	
GENERAL COUNSEL'S EXHIBIT NOS. 2(a) and 2(b)	37	
GENERAL COUNSEL'S EXHIBIT NOS. 2(c) and 2(d)	38	
GENERAL COUNSEL'S EXHIBIT NOS. 2(e) and 2(f)	39	
GENERAL COUNSEL'S EXHIBIT NO. 3	40	
EXCERPTS FROM TRANSCRIPT OF TRIAL PROCEEDINGS	42	
 Witnesses:	 Tr. Page	 App. Page
GEORGE HANDRINOS		
Direct	9	46
Cross	26	58
Redirect	46	65
Recross	51	67
STEVEN KRELLNSTEIN		
Direct	59	70
Cross	75	78
Redirect	84	81
Cross	88	82
THOMAS NASTOS		
Direct	92	84
Cross	104	91
Recross	121	92

	Tr. Page	App. Page
A BERT RESCIGNO		
Direct	129	96
Cross	139	103
Redirect	153	108
EUGENE MORETTI		
Direct	156	110
RALPH POLLACK		
Direct	214	116
Cross	236	129
Redirect	249	137
GUS MOUSTOGLIANNIS		
Direct	265	143
Cross	268	144
GEORGE HANDRINOS	272	146
EUGENE MORETTI		
Continued	273	147
ALBERT RESCIGNO	275	148
Further Redirect	288	149

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
BRANCH OFFICE
SAN FRANCISCO, CALIFORNIA

POLLACK ELECTRIC COMPANY, INC. 1/

and

LOCAL UNION NO. 3, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,
AFL-CIO 2/

Case Nos.
29-RC-2533
29-CA-3788

Elizabeth Kinney for the General Counsel.
N. George Turchin, New York, N.Y., for
the Company.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

- 4 . 1. 74 Charge filed
- 5. 6. 74 Complaint Notice of Pre-hearing Conference and Notice of Hearing dated
- 5.21.74 Supplemental Decision on Challenged Ballots Order consolidating Cases Notice of Pre-Hearing Conference and Notice of Hearing dated
- 5.22.74 Respondent's Answer received
- 5.23.74 Order Rescheduling Location of Pre-Hearing Conference dated
- 6.24.74 Order Rescheduling Hearing dated
- 7.10.74 Order dismissing Complaint dated
- 7.10.74 Order dismissing petition dated
- 7.16.74 Copy of Charging Party's letter to the General Counsel requesting review of the Regional Director's Dismissal of the Complaint dated
- 7.16.74 Copy of Petitioner's Appeal to the Board from the Decision of the Regional Director dismissing its Petition dated
- 11.84.74 Ruling on Administrative Action dated

11/25/74 Letter of Robert E. Allen Director, Office of Appeals sustaining the Charging Party's Appeals dated
12. 6.74 Complaint and Notice of Hearing dated
12. 11.74 Order Reinstating Supplemental Decision Consolidating Cases and Notice of Hearing dated
12. 18.74 Respondent's Answer received
1. 10.75 Order Amending Complaint dated
1. 28.75 Hearing Opened
1. 29.75 Hearing Closed
4. 21.75 Administartive Law Judge's Decision issued
5. 12.75 General Counsel's Exceptions to the Administrative Law Decision received
5. 23.75 General Counsel's Amendment of Exceptions dated
5. 27.75 Respondent's Exceptions to the Admininistrative Law Decivion received
8. 25.75 Decision and Order of the National Labor Relations Board dated

[Date 1/21/75]

[JD-(SF)-81-75
Brooklyn, N.Y.]

DECISION

Statement of the Case

GEORGE CHRISTENSEN, Administrative Law Judge: On January 28 and January 29, 1975, I conducted a hearing at Brooklyn, New York, to try issues raised by a complaint issued on December 6, 1974, on the basis of a charge filed by the Union on April 1, 1974. The complaint alleged that the Company by Ralph Pollack, president, and John Amorgianos, foreman, violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (hereafter called the Act) by:

1. Interrogating employees about their union activities;
2. Warning and directing employees to refrain from supporting the Union;

1/ Hereafter called the Company.

2/ Hereafter called the Union or Local 3.

3. Threatening employees with discharge if they supported the Union;

4. Promising employees benefits if they refrained from supporting the Union; and

5. Laying off and failing and refusing to recall six employees because they supported the Union and/or engaged in activities protected under the Act.

The complaint was consolidated with Case No. 29-RC-2533 for hearing on:

1. Board agent challenges to the ballots of the six alleged discriminatees; ^{3/}

2. Union challenge to the ballot of John Amorgianos.

The Company denies it committed the acts alleged above, denies any violation of the Act, contends the Board agent's challenges should be sustained and contends the Union's challenge should be overruled. The Company also contends it does not meet the Board's jurisdictional standards and that Amorgianos was not a supervisor and agent of the Company acting on its behalf at any time pertinent.

The issues are:

1. Jurisdiction;

2. Whether Amorgianos at time pertinent was a supervisor and agent of the Company acting on its behalf;

3. Whether the Company engaged in the discrimination alleged and thereby violated the Act; and

4. Whether the challenges should be sustained or overruled.

The parties appeared by counsel at the hearing and were afforded full opportunity to produce evidence, examine and cross-examine witnesses, argue and file briefs. Briefs have been received from the General Counsel and the Company.

^{3/} Based on the absence of their names from the list of eligible employees furnished by the Company.

Based upon my review of the entire record, observation of the witnesses, perusal of the briefs and research, I enter the following:

Findings of Fact

I. Jurisdiction

A. The Jurisdictional Facts

The jurisdictional facts were either stipulated or admitted, namely, that for several years prior to 1974, the Company was engaged in electrical installation and repair in New York State, with its office and shop located in Brooklyn, New York; that during 1973, the Company purchased goods and materials valued at \$3,600 from firms in New York which in turn received those goods and materials from firms located outside New York; and that during 1973, ^{4/} the Company performed services valued at \$18,294 for companies which were directly engaged in interstate commerce (Park Avenue 71st Street Corporation, \$12,284; Polymer Research Corporation, \$3,395; Sea Coast Towers, A Division of Alex Muss & Sons, Inc., \$2,150; Man Size, Inc. d/b/a He Man or Man Size Shops, \$465).

B. The Board's Prior Ruling

On November 14, 1974, the Board issued a ruling in Case No. 29-RC-2533 (reported at 214 NLRB No. 150) that it would effectuate the policies of the Act to assert its legal or statutory jurisdiction over the Company despite the Company's failure to meet its discretionary jurisdictional standards, on the basis of findings that: A Company agent represented before the New York State Labor Relations Board that the Company met NLRB jurisdictional standards;

4/ Read 1973 after all further date references omitting the year.

the Company did not question NLRB jurisdiction when the Union, in reliance upon that representation, filed a petition for certification with the NLRB; the Company did not question NLRB jurisdiction when the NLRB Regional Director conducted a hearing on the petition; the Company did not question jurisdiction when the Regional Director issued his decision asserting jurisdiction and directing an election; the Company did not appeal the Regional Director's decision asserting jurisdiction; the Company, for the first time, asserted its failure to meet the NLRB's discretionary jurisdictional standards at the prehearing conference scheduled prior to hearing on the challenged ballots and complaint issued against the Company; ^{5/} the Company clearly is within the NLRB's statutory jurisdiction. In my judgment, I am bound by the above ruling.

I therefore find and conclude that at all times pertinent the Company was engaged in commerce in a business affecting commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. Labor Organization

I find that at all times pertinent the Union was a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices and Challenges

A. The Employment Status of John Amorgianos

The complaint alleges that the Company by its alleged foreman and supervisor, John Amorgianos, committed various violations of the Act; the Union challenged the ballot cast by Amorgianos in the election on the ground he was a supervisor; the Company denies that Amorgianos at any time was its foreman, supervisor and agent.

^{5/} The December 6, 1974, complaint with respect to the unfair labor practice allegations is identical to a May 16, 1974, complaint.

Since this issue is crucial to later issues, it shall be resolved at this time.

Ralph Pollack, the owner and president of the Company ^{6/} testified that in 1970, he had two employees - Amorgianos and Carl Coltenmeyer; that on April 23, 1971, his work force was reduced to one employee - Carl Coltenmeyer (Amorgianos went to Greece); in June of 1971, he hired Al Recigno, increasing his work force back to two employees; in August of 1971, Amorgianos returned from Greece, applied for reemployment and was hired, increasing the work force to three employees; in July, his work force increased to five employees, inasmuch as he hired George Handrinos, Thomas and Nastos and Gus Moustogiannis between March and July of that year, while retaining Amorgianos and Recigno and losing Coltenmyer; in September, he hired Eugene Moretti, increasing his work force to six employees; in November, he hired Steve Krellenstein, increasing his work force to seven employees; in December, he terminated Handrinos, Nastos, Moustogiannis and Moretti, reducing his work force to three employees (Amorgianos, Recigno and Krellenstein); and in January, 1974, he terminated Recigno and Krellenstein, reducing his work force to one employee - Amorgianos.

Pollack testified he never granted Amorgianos any authority to hire or fire employees, grant wage increases, or grant requests for time off; he laid out all the work and directed its performance for all his employees, at all times; at all times, Amorgianos was simply a working electrician; he and Amorgianos owned station wagons and he utilized Amorgianos' services in transporting men to some of the jobs while he took others to other jobs, compensating

6/ An admitted supervisor and agent of the Company acting on its behalf at all times pertinent.

Amorgianos for use of his vehicle; and that he utilized Amorgianos to convey his orders and instructions to fellow Greeks employed by the Company because their English was limited and Amorgianos was fluent in Greek.

Amorgianos did not testify.

Recigno testified he was hired by Pollack in June of 1971; the Company had one other employee at the time - Carl Coltenmeyer; in late 1971, Pollack hired Amorgianos as his third employee; ^{7/} Amorgianos ran Pollack's business while Pollack took a vacation in 1971, and directed Recigno's work during that vacation period; Amorgianos remained in the Company's employ after Pollack's return from his vacation and continued to direct Recigno's work; Amorgianos sent him home when he reported late for work; Amorgianos from time to time transferred his helpers to other jobs and brought him helpers from other jobs; when he had an argument with Amorgianos over a radio in the shop, Amorgianos sent him home; he saw Pollack the next day, asked Pollack if he could take his orders from Pollack and not from Amorgianos and Pollack replied Amorgianos was his foreman and he could not grant Recigno's request.

George Handrinos testified he was interviewed and hired by Amorgianos ^{8/} as an electrician at a rate of \$2.50 an hour in late 1972, after Amorgianos explained the job requirements and was satisfied Handrinos could meet them; Amorgianos gave him his work

7/ Recigno testified he understood Amorgianos had previously been employed by Pollack.

8/ Both Amorgianos and Handrinos immigrated to the United States from Greece; Handrinos was referred to the Company for employment by the Greek-American Employment Agency, which specialized in securing employment for Greek immigrants; Handrinos was referred to the Company for possible employment by the Agency and told to speak to Amorgianos.

assignments; during his employ, he twice asked Amorgianos for raises and was increased to \$3.75 per hour; when he came in late, Amorgianos sent him home as a penalty; Pollack saw him leaving the shop after being sent home by Amorgianos, asked him why he was leaving and, when he told Pollack that Amorgianos sent him home because he was late, Pollack made no rejoinder.

Thomas Nastos ^{9/} testified that in February he was hired by Amorgianos as an electrician at a rate of \$2.50 an hour; both Amorgianos and Pollack gave him work assignments; a few months after his hire, he asked Amorgianos for a raise and Amorgianos said all right, you have the raise (to \$3.00); he subsequently asked Amorgianos for a second raise and, on not receiving it, asked Amorgianos again, upon which Amorgianos said to see Pollack; he saw Pollack and Pollack stated Amorgianos told him about the raise, but he had forgotten about it and Nastos would receive it shortly, which he did (to \$3.75); and he asked Amorgianos for time off and Amorgianos granted his request without any prior check with Pollack or anyone else.

Steven Krellaenstein testified he was hired in late August or early September; Amorgianos laid out the work of the mechanics and helpers; Amorgianos assigned both electricians or mechanics and their helpers to jobsites; Amorgianos instructed both electricians or mechanics and their helpers concerning what work they would perform and how to perform it; Amorgianos transported both mechanics or electricians and their helpers to jobsites and decided which men were to work at various jobsites.

Moustogiannis, who was hired in the spring, testified he received a telephone call from Amorgianos, who stated he had secured

9/ Nastos was hired through the same agency which referred Handrinos, in the same manner.

Moustogiannis' name from the Greek-American Employment Agency and asked him if he was an electrician; he replied that he was; Amorgianos asked him if he could come to work the following day; he replied he could, Amorgianos gave him the address at a jobsite and told Moustogiannis to report to him at that jobsite the following day; he went to the jobsite the next day, found Amorgianos, Amorgianos stated he was hired, and put him to work without a prior check with anyone; he was introduced by another employee to Pollack the next day; Pollack asked Amorgianos at that time at what rate he hired Moustogiannis; Amorgianos replied he hired Moustogiannis at a rate of \$2.50 an hour; Moustogiannis asked Amorgianos for a day off on one occasion, and Amorgianos granted his request immediately.

The parties stipulated that Moustogiannis would testify as did Handrinos if his testimony continued; the parties further stipulated that if Eugene Moretti were called to testify, he would testify as Krellenstein testified.

While Pollack testified generally that Amorgianos did not have any authority to hire, to fire, to grant increases, to grant time off or to direct the work of other employees, the Company did not refute the testimony of Recigno, Handrinos, Nastos, Krellenstein, Moustogiannis and Moretti, to specific instances wherein Amorgianos interviewed and hired employees, set initial rates; laid out and directed work; changed work assignments; granted (or at the very least, effectively recommended) wage increases; granted requests for time off; sent employees home when they reported late for work; acted as Pollack's vacation replacement; was recognized and treated both by Pollack and the employees as the Company's foreman in the commission of those acts and by Pollack's conduct and statements. ^{10/}

10/ Note for example, Pollack's failure to comment on Handrinos' report that he had been sent home by Amorgianos for reporting in late and Pollack's statement to Recigno that Amorgianos was his foreman and he could not grant Recigno's request that he take his orders only from Pollack.

On the basis of that unrefuted specific testimony, which I credit, I find and conclude that at all times pertinent Amorgianos possessed and exercised the powers of a supervisor and agent of the Company acting on its behalf, and that Pollack simply exercised the normal prerogative of an owner, to overrule, countermand, modify or affirm, those actions of his foreman which he did not approve of.

Having so found, I recommend that the Union's challenge to Amorgianos' ballot be sustained and that ballot be discarded.

B. The alleged discriminatory interrogations, threats, promises, and layoffs

1. Preliminary

It is undisputed that Moretti influenced Nastos and Krellestein to accompany him to the offices of Local 3 on October 1, where the three of them signed cards authorizing Local 3 to act as their collective-bargaining representative; that Handrinos signed a card as soon as he learned of their action (he was on vacation on October 1) -- on October 4 -- and both Moustogiannis and Recigno subsequently signed cards (on October 11 and November 29).

The Company's first awareness of its employees' interest in representation by Local 3 occurred several weeks after Moretti et al made their October 1 visit to Local 3's office; the complaint alleged that Amorgianos learned of that interest several weeks after October 1, whereupon he threatened them with discharge if they sought Local 3 representation.

This constituted the earliest allegation of unfair labor practice. It, and the later alleged violations, shall be discussed in time sequence below.

2. The alleged Amorgianos' late October/early November threat

The incident began in late October or early November when two of Local 3's representatives approached Amorgianos and Nastos

while they were en route to a company jobsite in Amorgianos' station wagon. Amorgianos had stopped to purchase fuel when two Local 3 representatives approached and one inquired concerning Amorgianos' interest in Local 3's representation of the Company's employees. Amorgianos replied he did not like Local 3. The representative asked Nastos how he felt. Nastos said he would have to think about it. The representative asked Nastos how many employees the Company had. Nastos informed him there were six. The representative gave Nastos six authorization cards and departed. As Nastos and Amorgianos proceeded toward the jobsite after leaving the station Amorgianos commented that Pollack did not like Local 3, its wage scales were too high; if the employees signed up with Local 3, they would lose their jobs.

When Amorgianos and Nastos arrived at the jobsite Moretti, Handrinos, and Moustogiannis, were there working. Nastos told them of his meeting with the Local 3 representative and the representative's handing him six cards; Amorgianos repeated his comments that Pollack was opposed to Local 3 and if the four signed, they would lose their jobs. Nastos thereupon threw the cards into a trash can. 11/

On the basis of the foregoing, I find that in late October or early November, the Company by Amorgianos threatened Nastos, Handrinos, Moustogiannis, and Moretti, with discharge if they signed cards authorizing Local 3 to act as their collective-bargaining representative and thereby violated Section 8(a)(1) of the Act.

11/ The above findings are based on the uncontradicted testimony of Nastos as corroborated by Handrinos (concerning Amorgianos' remarks at the jobsite) and the parties' stipulation that Moustogiannis would testify to the same effect as Handrinos. As noted heretofore, Amorgianos did not testify.

3. The alleged November 30 interrogation

On or about November 23, Local 3 filed a petition for certification as the collective-bargaining representative of the Company's electrician-mechanics and helpers with the New York State Labor Relations Board (hereafter called NYSLRB). On November 29, that board mailed a letter advising the Company the petition had been filed and scheduling a conference thereon for December 7.

The letter was opened by Pollack at the shop the following day, Friday, November 30, while most of the employees were in the shop.

On opening the letter, Pollack stated some of the employees had joined Local 3 and asked who had joined. There was no response. Amorgianos repeated Pollack's question, first in English and then in Greek. There still was no response. Amorgianos then stated in Greek, be a man, tell the truth, state who joined. Nastos responded, stating he joined the Union. Moustogiannis also stated that he also joined the Union. Both answered in Greek. Amorgianos asked them why they did that without telling him (in Greek), turned to Pollack, and told Pollack (in English) that Nastos and Moustogiannis admitted they joined the Union. Pollack did not comment. 12/

On the basis of the foregoing, I find that on November 30, the Company by Pollack and Amorgianos interrogated the Company's employees concerning their union activities and thereby violated Section 8(a)(1) of the Act.

4. The alleged first (December 1) discriminatory layoffs and promises

12/ These findings are based upon the mutually corroborative testimony of Handrinos, Nastos and Krellenstein and the parties' stipulation that Moustogiannis would testify the same as Handrinos and Moretti would testify the same as Krellenstein.

The day after Pollack's receipt of the Union's NYSLRB petition (Friday, November 30) and his and Amorgianos' interrogation of the employees (Saturday, December 1), Amorgianos telephoned Nastos at Nastos' home, told Nastos he and the other employees were laid off and stated that he told Nastos earlier if the employees joined the Union this would happen. Amorgianos telephoned Moustogiannis and made the same remarks to him.

Handrinos was at Nastos' home. Nastos repeated Amorgianos' remarks to Handrinos. Nastos and Handrinos telephoned the other employees -- Moretti, Moustogiannis, Krellenstein and Recigno -- and told them what had happened. They all agreed to go to Local 3's office the following Monday, December 3.

When Handrinos returned home his wife informed him Amorgianos had telephoned and wanted him to call back. Handrinos called Amorgianos and Amorgianos asked him if he had talked to any of the other employees. Handrinos replied that he had. Amorgianos stated that Handrinos knew what had happened -- they were all laid off. Handrinos confirmed he was so informed.

Either that day (December 1) or on the following day, Amorgianos telephoned Krellenstein. He told Krellenstein if he joined the Union he wouldn't be working for Pollack but if he stayed with Pollack, he would have a job and receive more money and benefits; he then asked Krellenstein which Krellenstein wanted. Krellenstein replied he wanted to stay with Pollack and work. Amorgianos advised Krellenstein he would be in touch with him later. 13/

13/ The above findings are based upon the uncontradicted testimony of Nastos, Handrinos and Krellenstein and the parties' stipulation that Moustogiannis if called to testify would testify to receiving a telephone call from Amorgianos on December 1 and hearing Amorgianos make the same remarks he made to Nastos.

On the basis of the foregoing, I find that on December 1 the Company by Amorgianos notified Nastos and Moustogiannis that all the Company's employees were laid off because of their union activities and thereby violated Section 8(a)(1) and (3) of the Act; I further find on the basis of the foregoing that the Company by Amorgianos on December 1 or 2 threatened Krellenstein with discharge if he supported the Union and promised Krellenstein wage and other benefit improvements if Krellenstein refrained from supporting the Union, thereby violating Section 8(a)(1) of the Act.

5. The alleged December 3 interrogation and promise

After conferring with the Union on Monday, December 3, the employees proceeded to the Company's shop to pick up their tools. Amorgianos opened the shop and, while the men were picking up their tools, went to the telephone. On completing his call, he asked the men to wait for Pollack's arrival, which they did.

When Pollack arrived, he asked the men what was happening. They replied that since they had been fired by Amorgianos, they came to pick up their tools. Pollack replied he was the boss, they were not fired, but were laid off because work was slow. He went on to ask them why they joined Local 3. Nastos replied they joined to secure better pay and benefits. Pollack stated they should have talked to him first, there were better unions than Local 3 which he could have gotten them into and, if they hadn't gone behind his back, he would have helped them do so. One of the employees asked Pollack if they weren't fired, what should they do. Pollack replied they should go home and he would call them when he needed them. 14/

14/ The foregoing findings are based upon the mutually corroborative testimony of Hadriinos, Krellenstein, and Recigno.

Recigno and Krellenstein remained in the shop after the rest of the employees left with their tools. After the other employees left, Pollack asked them what their views were about the Union. They did not respond. Pollack stated he would talk to them again later. 15/

Based on the foregoing, I find and conclude that the Company by Pollack on December 3 impliedly promised his employees he would get them into a better union if they abandoned their support of Local 3 and interrogated them concerning whether and their reasons for supporting Local 3, thereby violating Section 8(a)(1) of the Act.

I further find and conclude that the Company, by Pollack on December 3 separately interrogated Recigno and Krellenstein concerning their views on unionism and thereby additionally violated Section 8(a)(1) of the Act.

6. The alleged December 4 interrogation

On December 4 Pollack telephoned Recigno at his home and asked Recigno whether he told the Union his current pay rate. Recigno replied he did not go to the union hall. Pollack asked him who went to the union hall. Recigno replied he did not know, since he didn't go. Pollack instructed Recigno to come back to work the following day. 16/

On the basis of the foregoing, I find and conclude that on December 4 the Company by Pollack interrogated Recigno concerning the union activities of other employees and thereby violated Section 8(a)(1) of the Act.

7. The alleged December 7 interrogation

15/ This finding is based upon the testimony of Recigno.

16/ The foregoing finding is based upon the uncontradicted testimony of Recigno.

Recigno and Krellenstein were called back to work on December 5 and worked thereafter to January 11, 1974. On December 7, Krellenstein had a discussion with Amorgianos in the shop. Amorgianos told Krellenstein the three Greeks (Handrinos, Moustogiannis and Nastos) would never be accepted by Local 3 due to their difficulties with the English language; that neither would Krellenstein be accepted, because he did not have enough experience; and that only Recigno would be able to get in. Amorgianos then asked Krellenstein if he was still interested in Local 3 representation. Krellenstein replied he was only interested in working and gaining experience in the electrical field. ^{17/}

Based upon the foregoing, I find that the Company by Amorgianos on December 7 interrogated Krellenstein concerning his continued interest in union representation and thereby violated Section 8(a)(1) of the Act.

8. The alleged final (December 7 and January 11) discriminatory layoffs

As noted heretofore (in the section of this Decision entitled "jurisdiction") the Union filed its original petition for certification as collective-bargaining representative of the Company's electrician-mechanics and helpers with the NYSLRB in November; on November 30 the Company first learned of the filing of that petition; and on December 7 the Company, at a prehearing conference before the NYSLRB, indicated jurisdiction lay with the NLRB rather than the NYSLRB.

On December 5, Pollack called Handrinos, Nastos and Moustogiannis in for one day's work, namely, on Thursday, December 6.

17/ This finding is based upon the uncontradicted testimony of Krellenstein.

On the following day, December 7, which was the same day the NYSLRB hearing was held, he again laid them off. In a conversation with Handrinos on the latter date, Pollack told Handrinos to take his tools home, he would call him again if he needed him. The Company never again called Handrinos, Nastos or Moustogiannis (or Moretti after his December 1 lay-off).

The Union, in reliance upon the Company representation at the NYSLRB December 7 conference that the NLRB had jurisdiction, filed its petition with the NLRB on December 19.

At that time Recigno and Krellenstein were still employed by the Company. They were recalled on December 6 and worked continuously from December 6.

A hearing was scheduled on the NLRB petition for January 11. That same day, Recigno, Krellenstein and a third employee hired sometime in December were laid off. Recigno and Krellenstein have never been recalled.

All employees who testified (Handrinos, Krellenstein, Moretti, Nastos and Recigno) stated there was work remaining to be done at the various jobsites where they were employed at the time they were laid off.

The Company did not deny this was so, but contended the work had diminished to the degree Pollack and Amorgianos could accomplish it without the help of any additional employees.

The Company contends the six employees were laid off and never replaced because the volume of work declined from and after December 1.

There is no question the Company performed less work after December 1; ^{18/} the question, however, is whether it declined

18/ Pollack's testimony to a lower gross in 1974 than in 1973 is uncontradicted.

because Pollack followed the deliberate policy of reducing the amount of new or added business he would perform after he learned of, and in order to thwart, his employees' interest in Local 3 representation.

I find this is what he did. Both Amorgianos and Pollack made it clear to the employees that the Company would terminate their employment if they sought and secured representation by Local 3 for the purpose of bargaining collectively with the Company concerning their rates of pay, wages, hours and working conditions. When the employees disregarded that warning, Pollack simply gradually reduced his commitments after December 1 to a point he and Amorgianos could perform the work, laying off the rest of the employees. ^{19/}

I therefore find and conclude that the Company laid off Moretti on December 1, Handrinos, Moustogiannis and Nastos on December 7, and Krellenstein and Recigno on January 11, 1974, to thwart those employees' effort to secure representation by Local 3 and to avoid bargaining collectively with that organization concerning its employees' rates of pay, wages, hours and working conditions and thereby violated Section 8(a)(1) and (3) of the Act.

9. The unit and the question concerning representation

a. The unit

On January 16, 1974, the Regional Director for Region 29 found the following to be an appropriate unit for the purpose of collective bargaining: "All electricians, electrical maintenance mechanics and helpers employed by the employer at its Brooklyn, New York, premises, excluding all other employees, guards and supervisors as defined in the Act."

^{19/} Pollack testified his gross in 1973 was \$75,000; in 1974, \$26,000. I do not credit his testimony that the drop was solely attributable to a drop in business orders, in view of the direct correlation between his threats, layoffs and drop in gross.

I find and conclude that the aforesaid unit is appropriate for collective bargaining purposes within the meaning of Section 9 of the Act.

5. The question concerning representation

The Regional Director also directed an election for February 8, 1974, to decide whether or not the employees in the aforesaid unit desired to be represented by Local 3.

Handrinos, Krellenstein, Moretti, Moustogiannis, Nastos and Recigno, appeared and cast ballots at the February 8, 1974, election. Their ballots were challenged by the Board agent conducting the election on the ground their names did not appear on the eligible voters' list.

Findings have been entered heretofore that Handrinos, Moretti, Moustogiannis, Nastos, Krellenstein and Recigno, were laid off prior to February 8, 1974, and that none of them subsequently were recalled.

Findings have also been entered that the Company reduced its workload and terminated the above-named employees to chill or thwart their effort to secure representation by Local 3 in bargaining collectively on their behalf with the Company concerning their rates of pay, wages, hours and working conditions.

Having found the aforesaid employees were discriminatorily discharged, I further find they were employees of the Company at the time of the election, a question concerning their representation exists, their ballots should be opened and counted, and an appropriate certification should be issued based upon a tally of their ballots.

Conclusions of Law

1. The Company at all times pertinent was an employer engaged in commerce in a business affecting commerce and Local 3

was a labor organization, as those terms are defined in Section 2(2), (5), (6) and (7) of the Act.

2. At all times pertinent Pollack and Amorgianos were supervisors and agents of the Company acting on its behalf.

3. The following employees of the Company constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All electricians, electrical maintenance mechanics and helpers employed by the Company at its Brooklyn, New York, premises, excluding all other employees, guards and supervisors as defined in the Act.

4. The Union's February 8, 1974, challenge to the ballot cast by Amorgianos shall be sustained inasmuch as he is a supervisor and the Board agent's challenges to the ballots cast on February 8, 1974, by Handrinos, Krellaenstein, Moretti, Moustogianis, Nastos and Recigno shall be overruled and their ballots shall be counted, inasmuch as they retained employee status with the Company at the time of the election.

5. The Company violated Section 8(a)(1) of the Act by:

(a) Amorgianos' threat and warning in late October or early November to employees against seeking representation by Local 3 and loss of jobs if they did;

(b) Pollack's and Amorgianos' interrogation of employees concerning their union activities on November 30;

(c) Amorgianos' December 1 or 2 threat to discharge Krellaenstein if he supported Local 3 and promise of wage and other improvements if he refrained from supporting Local 3;

(d) Pollack's December 3 interrogation of employees concerning their union activities and promise that he would get them into a better union if they refrained from supporting Local 3;

(e) Pollack's December 4 interrogation of Recigno concerning his union activities;

(f) Amorgianos' December 7 interrogation of Krellenstein concerning his union activities;

6. The Company violated Section 8(a)(1) and (3) of the Act by:

(a) Amorgianos' December 1 layoff of Handrinos, Krellenstein, Moretti, Moustogiannis, Nastos and Recigno for supporting Local 3; and

(b) The Company's December 1 termination of Moretti, December 7 termination of Handrinos, Moustogiannis and Nastos, and January 11, 1974, termination of Krellenstein and Recigno, to chill or thwart those employees' efforts to secure representation by Local 3 for the purpose of bargaining collectively with the Company concerning their rates of pay, wages, hours and working conditions.

The Remedy

Having found that the Company engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that the Company be directed to cease and desist therefrom and to take affirmative action designed to effectuate the purposes of the Act. I shall recommend that the Company be ordered to cease and desist from interrogating its employees concerning their support of Local 3, threatening its employees with discharge for seeking Local 3's representation, promising its employees benefits if they refrain from seeking Local 3's representation and, reducing its business and laying off its employees to thwart its employees' efforts to secure Local 3's representation and to avoid bargaining collectively with Local 3 concerning its employees' rates of pay, wages, hours and conditions of employment.

I shall recommend that the Company be ordered to send a letter to Handrinos, Krellenstein, Moretti, Moustogiannis, Nastos and Recigno, stating it will cease and desist from the foregoing; ^{20/} that the Company be ordered to recall the six employees just named to their former or substantially equivalent jobs if they exist (if necessary, discharging any replacements); that if any one or more of the employees are not recalled they shall be placed on a preferential hiring list and recalled as need arises for their services; and that the Company make the six employees named above whole for any wage losses they suffered by reason of the discrimination practiced by the Company against them by payment to them of the sum of money they would have earned had they remained in the Company's employ for a period commencing with the date of their termination and ending on the date they secured substantially equivalent employment. ^{21/} The employees' lost wages shall be computed in accordance with the formula prescribed in F. W. Woolworth Company, 90 NLRB 289, with interest at 6 percent computed in accordance with the formula prescribed in Isis Plumbing & Heating Co., 138 NLRB 716.

I shall also recommend that the Union's challenge to the ballot cast by Amorgianos in the February 8, 1974, election be sustained, the Board agent's challenges to ballots cast by the six employees named above at that election be overruled, a tally of those employees' ballots be prepared, and a certification based thereupon be issued.

Upon the basis of the foregoing findings of fact, conclusions of law and the entire record and pursuant to Section 10(c) of the Act, I recommend the issuance of the following: ^{22/}

20/ The record at the January 28-29, 1975, hearing disclosed that Amorgianos, the foreman, was the only person in the Company's employ; it would be pointless to post notices.

21/ See Darlington Manufacturing Company, 139 NLRB 241 at 255.

22/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations
(cont'd)

ORDER

Pollack Electric Company, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

- (a) Interrogating its employees concerning their activities on behalf of Local 3, International Brotherhood of Electrical Workers, AFL-CIO;
- (b) Threatening its employees with discharge for seeking representation by the above union;
- (c) Promising its employees benefits for refraining from seeking Local 3 representation;
- (d) Reducing its business and laying off its employees to thwart its employees' efforts to secure representation by Local 3 and to avoid bargaining collectively with Local 3 concerning its employees' rates of pay, wages, hours and working conditions.

2. Take the following affirmative action designed to effectuate the purposes of the Act:

- (a) Send a letter to George Handrinos, Stephen Krellaenstein, Eugene Moretti, Gus Moustogiannis, Thomas Nastos and Albert Recigno, stating it will cease and desist from interrogating them concerning their activities on behalf of Local 3, threatening them with discharge if they seek representation by Local 3 or any other labor organization, promising them benefits if they refrain from seeking representation by Local 3 and reducing its business and laying them off to thwart their effort to secure representation by Local 3 and to avoid bargaining with Local 3 concerning their rates of pay, wages, hours and working conditions.

22/ Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) In the same letter, offer the aforesaid employees immediate and full reinstatement to their former jobs, or substantially equivalent jobs if their former jobs no longer exist, if necessary discharging any replacements; if those jobs do not exist, notify the aforesaid employees of their placement on a preferential hiring list for recall as their former or equivalent jobs arise; advise the aforesaid employees that shall be made whole in the manner set forth in the "Remedy" section of this Decision;

(c) Make the aforesaid employer's employees whole in the manner set out in the "Remedy" section of this Decision;

(d) Preserve and, upon request, make available to National Labor Relations Board agents for examination and copying, all records necessary for the determination of the amount of back-pay and any other payments and obligations due under this Order;

(e) Notify the Regional Director for Region 29, in writing, within 20 days from receipt of this Decision, what steps the Company has taken to comply herewith. 23/

(f) The following employees of the Company constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All electricians, electrical maintenance mechanics and helpers employed by the Company at its Brooklyn, New

23/ In the event that the Board's Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

York, premises, excluding all other employees, guards and supervisors as defined in the Act.

(g) A question affecting commerce exists concerning the representation of the Company's employees in the aforesaid unit within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

Dated: April 21, 1975.

/s/ George Christensen
Administrative Law Judge

[Dated 8/25/75]

[D-352
Brooklyn, N.Y.]

* * * * *

DECISION, ORDER, AND DIRECTION

On April 21, 1975, Administrative Law Judge George Christensen issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief. The General Counsel filed exceptions, a supporting brief, and an amendment to his exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order as modified herein. 1/

In agreement with the Administrative Law Judge, we have sustained the challenge to the ballot of John Amorgianos and overruled challenges to the ballots of George Handrinos, Thomas Nastos, Gus Moustogiannis, Eugene Moretti, Steve Krellenstein, and Al Recigno. Accordingly, we shall remand the representation case to the Regional Director for Region 29 with directions that the ballots of the above-named employees whose challenges have been hereby overruled be

1/ We agree with the General Counsel that the Administrative Law Judge should have included in his proposed Order the customary notice-posting requirement. We hereby correct that omission. In view of the number of non-English-speaking employees employed by the Respondent, we shall order that the attached notice be posted in Greek, as well as in English.

opened and counted, and that a revised tally issue. If the revised tally establishes that Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, represents the majority of Respondent's employees in the appropriate unit, the Regional Director shall certify it as the collective-bargaining representative of the unit employees. ^{2/}

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Pollack Electric Company, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order as modified herein:

1. Insert the following after paragraph 1(d):

"(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act."

2. Insert the following after paragraph 2(d), reletter subsequent paragraphs accordingly, and insert the attached notice at the end of the Administrative Law Judge's Decision:

"(e) Post at its premises in Brooklyn, New York, copies of the attached notice marked 'Appendix.' ^{3/} Copies of said notice, in

2/ We shall retain jurisdiction over the parties in the event the Union fails to achieve a majority of the valid votes cast in order to entertain an appropriate and timely request for further remedial action.

3/ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

both English and Greek, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material."

3. Insert the following after the last paragraph of the recommended Order:

"IT IS ALSO ORDERED that the Regional Director open and count the ballots of George Handrinos, Thomas Nastos, Gus Moustogiannis, Eugene Moretti, Steve Krellenstein, and Al Recigno, and prepare and cause to be served on the parties a revised tally of ballots, upon the basis of which the Regional Director shall issue the appropriate certification."

DIRECTION

It is hereby directed with regard to the election held on February 8, 1974, in Case 29-RC-2533, that the Regional Director for Region 29 shall, pursuant to the Board's Rules and Regulations, within 10 days from the date of this Decision, Order, and Direction, open and count the ballots of George Handrinos, Thomas Nastos, Gus Moustogiannis, Eugene Moretti, Steve Krellenstein, and Al Recigno, and thereafter prepare and cause to be served on the parties a revised tally of ballots, upon the basis of which the Regional Director shall issue the appropriate certification.

Dated, Washington, D. C. August 25, 1975.

Betty Southard Murphy, Chairman
Howard Jenkins, Jr., Member
John A. Penello, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT lay off or otherwise discriminate against George Handrinos, Thomas Nastos, Gus Moustogiannis, Eugene Moretti, Steve Krellaenstein, and Al Recigno, or any other employee, with regard to their hire or tenure of employment in order to discourage membership in or activities on behalf of Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, or any other labor organization.

WE WILL NOT interrogate employees concerning their union activities.

WE WILL NOT threaten our employees with loss of employment because of their engaging in union activities or selecting a union as their representative.

WE WILL NOT promise our employees benefits for refraining from engaging in union activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, or to refrain from any or all such activities, except to the extent such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act. The appropriate bargaining unit is:

All electricians, electrical maintenance mechanics and helpers employed by the Company at its Brooklyn, New York, premises, excluding all other employees, guards and supervisors as defined in the Act.

WE WILL send a letter to the above-named employees stating we will cease and desist from the foregoing.

WE WILL offer George Handrinos, Thomas Nastos, Gus Moustogiannis, Eugene Moretti, Steve Krellenstein, and Al Recigno immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges. If those positions no longer exist, we will notify the aforesaid employees of their placement on a preferential hiring list for recall as their former or equivalent jobs arise.

WE WILL pay George Handrinos, Thomas Nastos, Gus Moustogiannis, Eugene Moretti, Steve Krellenstein, and Al Recigno for the earnings lost because of the discrimination against them, with 6-percent interest.

POLLACK ELECTRIC CO., INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241, Telephone 212-596-3535.

GENERAL COUNSEL'S EXHIBIT NO. 1(q)

Pursuant to Sections 102.63 and 102.67(c)(1) and (4), Petitioner timely appeals to the Board from Region 29's dismissal of the above Petition, and asserts that a substantial question of policy is raised because of the absence of officially reported Board precedent, and that, if Region 29's dismissal is based upon Board policy, there are compelling reasons for reconsideration of such policy.

The questions here involved are:

1. Whether the Board is bound by its "jurisdictional standards" in determining whether it may certify results of an election which it duly conducted where the Respondent has waived the commerce issue and/or should be estopped from successfully raising the issue of commerce;
2. If the Board is not so bound, whether the Board should elect to retain jurisdiction where the Respondent has waived the commerce issue prior to the conducting of the representation election and/or should be estopped from successfully raising the issue of commerce.

Region 29 conducted an election at the Employer's premises on February 8, 1974 following the events set forth in the annexed affidavit of the undersigned.

The underlying issue here is whether under the Act an employer can play games which will render both this Board and the New York State Labor Relations Board jurisdictionally incapable of certifying labor unions to represent units of employees of smaller companies.

Region 29 dismissed the union's Petition because of an absence of precedent.

We respectfully contend that precedent is not needed for the Board's exercise of jurisdiction under the foregoing circumstances.

Wherefore, Region 29's decision dismissing the Petition and setting aside the results of the election should be reversed.

Respectfully submitted,
MENAGH, TRAINOR & ROTHFIELD

By: _____
NORMAN ROTHFIELD

Dated: July 16, 1974

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

NORMAN ROTHFELD, being duly sworn, deposes and says:

I am an attorney for Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, and I am personally familiar with the facts herein.

On or about November 23, 1973 the Union filed a Petition for Investigation and Certification of Representatives at the office of the New York State Labor Relations Board (SLRB), in case No. SE 47416 for a unit of Respondent's "Electricians, Maintenance Mechanics and Helpers." SLRB records show that on November 30, 1973, Pollack received notice of the filing of this Petition, and that on December 12, 1973 Notice of Conference scheduled for December 18, 1973 was sent to George Turchin, Esq.

At the SLRB Conference on December 18, 1973 Mr. Turchin stated that he believed that NLRB had jurisdiction, the employer having six employees and an annual \$100,000 volume and over \$50,000 purchases. My notes do not reflect whether or not Mr. Turchin specifically used the words indirect inflow. Accordingly, on December 19, 1973, Local Union No. 3 filed an RC Petition with Region 29. Hearing was held on January 11, 1974. This hearing was typical of a number of hearings had with Mr. Turchin, wherein he raised no issues but did not consent to an election. Based upon my understanding that Region 29 was taking jurisdiction, I withdrew my SLRB Petition on January 15, 1974.

In recent years, when Local Union No. 3 used to picket Mr. Turchin's clients, they usually filed charges and claimed to be in interstate commerce. We have tried to persuade Local Union No. 3 that elections are preferable to enjoinal picketing. We fervently hope the Union stays convinced.

Surely it would "effect the purposes of the Act" for the Board to take jurisdiction here.

Norman Rothfeld

Sworn to before me this
26th day of June, 1974

Notary Public
Eileen Russell
Commission Expires March 30, 1975

General Counsel's Exhibit 1(R)

D-9397

Brooklyn, N.Y.

* * * * *

RULING ON ADMINISTRATIVE ACTION

On January 16, 1974, the Regional Director for Region 29 issued a Decision and Direction of Election in the above-entitled proceeding in which he asserted jurisdiction on the basis of his finding that the Employer, an electrical contractor located in Brooklyn, New York, purchased over \$50,000 worth of products which originated outside the State of New York, and he found the Petitioner's requested unit of all electricians, electrical maintenance mechanics, and helpers of the Employer to be appropriate. The Employer filed no request for review of the Regional Director's decision. The tally of ballots for the election held therein on February 8 showed that all seven of the ballots cast were challenged. After investigation of unfair labor practice charges filed by the Petitioner, the Regional Director, on May 15, issued a complaint in Case 29-CA-3788, alleging *inter alia*, that the Employer violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, in laying off six of the challenged voters.¹ On May 21 the Regional Director issued a Supplemental Decision herein consolidating this case with Case 29-CA-3788 for hearing.

Thereafter, on July 10, the Regional Director issued an order severing cases and dismissing the complaint in Case 29-CA-3788,² and an order

¹ The other challenged voter was alleged in the complaint to be a supervisor acting as agent of the Employer in the commission of unfair labor practices.

² The Petitioner filed an appeal therefrom which is now pending before the General Counsel.

dismissing petition, in which he ordered that the results of the election be set aside and the petition herein be dismissed administratively, upon consideration of his findings, *inter alia*, that the Employer came forward with its books and records and that an examination thereof indicated it did not meet the Board's jurisdictional standards. Thereafter, the Petitioner requested review of the Regional Director's order dismissing petition on the ground that he departed from precedent and urging that, in the circumstances, the Board should retain its jurisdiction in this case.³

The Board, having duly considered the matter, found merit in the request for review and decided that, in the circumstances of the case, it would effectuate the policies of the Act to retain jurisdiction over the Employer's operations.⁴

³ The Petitioner had earlier filed a petition with the New York State Labor Relations Board (NYSLB) for an election among these employees involved. The Petitioner asserts that on December 18, 1973, at a prehearing conference in that proceeding, the Employer's counsel stated he believed the National Labor Relations Board had jurisdiction as the Employer had an annual volume of business of \$100,000 and made purchases in excess of \$50,000. For this reason, Petitioner states, it filed the instant petition on December 19. It states further that at the hearing hereinbefore held on January 11, 1974, the Employer "raised no issues but did not consent to an election" and that, based on its understanding that jurisdiction would be asserted herein, the Petitioner, on January 15, withdrew its petition before the NYSLB.

⁴ Clearly, a question concerning the Board's legal, or statutory, jurisdiction may be raised at any time. However, where a party contests the Board's assertion of jurisdiction under one of its discretionary standards, the issue must be timely raised. Here, the Regional Director, in his Decision and Direction of Election, asserted jurisdiction over the Employer on the basis of the Board's discretionary standard for nonretail establishments. Indeed, at the representation hearing the Employer agreed that "during the past 12 months it has purchased and received electrical supplies valued in excess of \$50,000 from firms located within the State of New York, which firms received said profits (sic) from manufacturers outside the State of New York" and the Employer did not seek to contest the Regional Director's assertion of jurisdiction by filing a request for review of his decision. Nor did it at any time prior to the election conducted pursuant thereto file a motion for reconsideration of his decision on the basis of newly discovered evidence relating to its indirect inflow. The file indicates, rather,

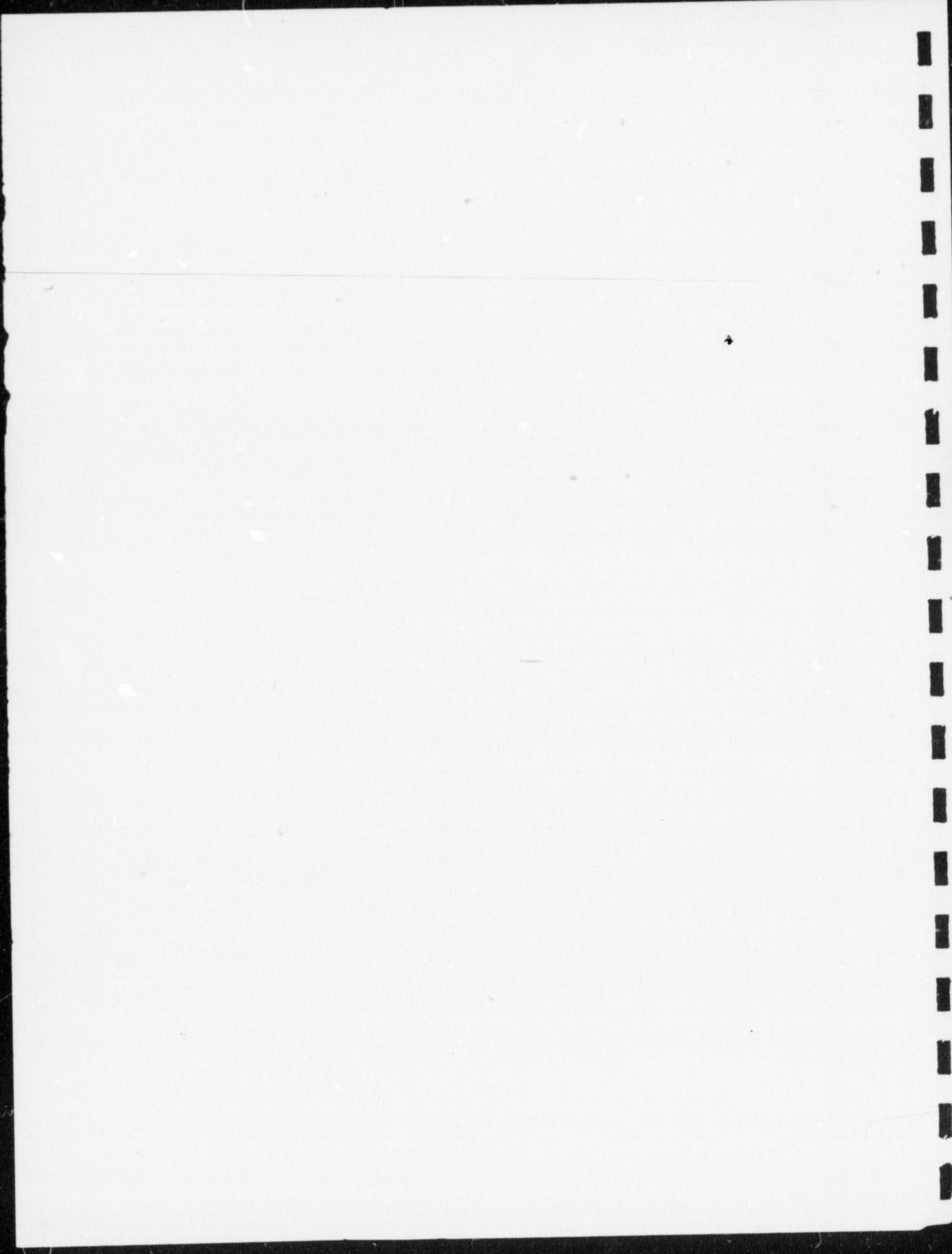
Accordingly, the Regional Director's order dismissing petition is hereby vacated, and he is directed to reinstate the petition and to proceed further in accordance with the Board's Rules and Regulations.

Dated, Washington, D.C.

By direction of the Board:

Robert Volger
Deputy Executive Secretary

that only after the election, after the issuance of a complaint alleging that it had discriminatorily laid off all of the employees in the appropriate unit, and during the pre-hearing conference prior to the scheduled hearing in the consolidated cases, did the Employer come forward with its books and records in an effort to demonstrate that it does not in fact meet the Board's discretionary standard for assertion of jurisdiction over nonretail enterprises. The existence of the Board's statutory jurisdiction is clear and not contested. The Board concludes that the Employer may not at this time relitigate the question whether it meets the nonretail standard. See *Prestige Hotels, Inc., d/b/a Marie Antionette Hotel*, 125 NLRB 207, 208-209 (1959).



GENERAL COUNSEL'S EXHIBIT NOS. 2(a) and 2(b)

Affiliated with American Federation of Labor

I hereby enroll to become a member and designate Local No. 3, International Brotherhood of Electrical Workers, to represent me in all negotiations for collective bargaining and better working conditions.

Name **GEORGE HANDRINOS** **Local** **3-4-73** **Age** **27**
Address **100-09 65th Ave., Forest Hills, N.Y. 11375**
Telephone **544-6799**

Hours of labor per day **8** Days per week **5** **cc** **6**
Present Employer **POLLACK** **DELEC.**
Present Employer's Address **9025** **AVENUE X**
FOREIGN **→ 11 years** **Domestic Experience** **11 M.** **Classification** **MECHANIC**
Present Wage **\$ 3.75**

Have you ever been a Member of the I.B.E.W.? **NO**

Signature **George Handrinos**

Affiliated with American Federation of Labor

I hereby enroll to become a member and designate Local No. 3, International Brotherhood of Electrical Workers, to represent me in all negotiations for collective bargaining and better working conditions.

Name **Steven Reellenstein** Date **07/10/83** Age **20**
 Address **1226 East 56 St**
6 Rm 1 New York 10022 Telephone **241-1736**

Hours of labor per day **8** Days per week **5**
 Present Employee **Patlock Metal Corp**
 Present Employer's Address **1400 Broadway New York NY 10018**
 Years Experience **1** Classification **First year apprentice**
 Present Wage **\$2.25 hr**

Have you ever been a Member of the I.B.E.W. **No**

Signature **Steven Reellenstein**

Form OA-738

GENERAL COUNSEL'S EXHIBIT NOS. 2(c) & 2(d)

Affiliated with American Federation of Labor

I hereby enroll to become a member and designate Local No. 3, International Brotherhood of Electrical Workers, to represent me in all negotiations for collective bargaining and better working conditions.

Name THOMAS NASTOS Date Oct 1, 1910-27

Address 23-03 38 street Astoria
L.I. N.Y. 11005 Telephone 278-2730

Hours of labor per day **8** Days per week **5** ~~per 6~~

Present Employer POLLACK CLCC

Present Employer's Address 1325 AV X BRO

Years Experience 8 no-the-classification Mechanic

Present Wage \$ 3.75

Have you ever been a Member of the I.B.E.W.?

Signature Thomas Astor

Affiliated with American Federation of Labor

I hereby enroll to become a member and designate Local No. 3, International Brotherhood of Electrical Workers, to represent me in all negotiations for collective bargaining and better working conditions.

Name Joe Kostylewski Date 12/18/96 Box 26
Address 21 Elm Street Westfield, NJ
Phone (908) 232-2005

Hours of labor per day 8 Days per week 5 or 6

Present Employer: COLLIER'S Present Employer's Address: 1925 X BALYN N.Y.

Years Experiencing ~~the same~~ ~~any~~ Classification 1963-1970

Present Wage \$ 2.50 per hour.

Have you ever been a Member of the I.B.E.W.?

Signature (Garry, Inventor)

Signature *Guillermo Montoya*

GENERAL COUNSEL'S EXHIBIT NC3, 2(e) & 2(f)

Date 10/1/73 Age 20

Affiliated with American Federation of Labor (3)

I hereby enroll to become a member and designate Local # 3
International Brotherhood of Electrical Workers, to represent me in all
negotiations for collective bargaining and better working conditions.

Name **EUGENE MORETTI** Date **10/1/73** Age **20**
Address **1608 E 32nd ST. 11216**
BROOKLYN, NY Telephone 208-5561

Hours of labor per day **8** Days per week **5**
Present Employer **POLLACK ELECTRIC**
Present Employer's Address **1925 Ave X**
Years Experience **1** Classification **HELPER**
Present Wage **\$2.50 per hour**

Have you ever been a Member of the I.B.E.W.I. **NO**
Signature **Eugene Moretti**

Form 69 11-69

Date 10/1/73

Affiliated with American Federation of Labor

I hereby enroll to become a member and designate Local # 3
International Brotherhood of Electrical Workers, to represent me in all
negotiations for collective bargaining and better working conditions.

Name **ALBERT RENZI** Date **10/1/73** Age **20**
Address **1342 40th Street Brooklyn, New York 11218**
BROOKLYN, NY Telephone 336-3333

Hours of labor per day **8** Days per week **5**
Present Employer **POLLACK ELECTRIC**
Present Employer's Address **1925 Ave X**
Years Experience **3** Classification **WORKER**
Present Wage **\$1.75 per hour**

Have you ever been a Member of the I.B.E.W.I. **NO**
Signature **Albert Renzi**

Form 69A 7-73

GENERAL COUNSEL'S EXHIBIT NO. 3

New York State Labor Relations Board
Two World Trade Center
Thirty-Third Floor
New York, N.Y. 10047

Pollack Electric
1925 Avenue X
Brooklyn, New York 11235

Re: Pollack Electric
Case No. SE-47416

Gentlemen:

A petition has been filed with this Board by the Local Union No. 3, IBEW, AFL-CIO requesting that it be certified as the representative for the purpose of collective bargaining pursuant to the provisions of Section 705 of the New York State Labor Relations Act for electricians, maintenance mechanics and helpers in your employ.

To facilitate the Board's investigation of this matter, we have arranged for a conference of all interested parties to be held at these offices on Friday, December 7, 1973 at 1:00 p.m.

This conference will be entirely informal, being intended solely to assist the Board to a preliminary understanding of the positions of all parties in this matter. Kindly have a representative present at the conference. It is important and necessary that you have available at this conference a list setting forth the names and classifications of the persons presently employed by you, together with payroll receipts, vouchers, or other records containing the signatures of your employees in the above mentioned unit.

The State Labor Relations Act (Article 20 of the Labor Law, Section 705) mandates the Board to investigate questions or controversies concerning representation. The Board has power to conduct this investigation by means of a formal hearing to which witnesses may be subpoenaed and where testimony is taken under oath.

In order that your employees may be advised that this petition has been filed, we ask your cooperation in posting the enclosed Notice conspicuously on your bulletin board or at such place as your employees congregate.

Very truly yours,

Eleanor Schachner
Examiner
Tel. No. 488-3820

Enc.

[EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS]

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD
29th REGION

* * * * *

In the Matter of: *
POLLACK ELECTRIC CO., INC., *
Employer *
and *
LOCAL UNION No. 3, INTERNATIONAL * Cases Nos.
BROTHERHOOD OF ELECTRICAL WORKERS, * 29-RC-2533
AFL-CIO, * 29-CA-3788
Petitioner *
*
POLLACK ELECTRIC CO., INC. *
and *
LOCAL UNION NO. 3, INTERNATIONAL *
BROTHERHOOD OF ELECTRICAL WORKERS, *
AFL-CIO. *
* * * * *

National Labor Relations Board
16 Court Street
Brooklyn, New York
Tuesday, January 28, 1975

The above entitled matter came on for hearing pursuant to
notice at 10:00 o'clock a. m.

BEFORE:

GEORGE CHRISTENSEN, Administrative Law Judge

APPEARANCES:

ELIZABETH KINNEY, ESQ., Counsel for the General Counsel

N. GEORGE TURCHIN, ESQ., Attorney for Pollack Electric
253 Broadway
New York, New York

2

INDEX

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
GEORGE HANDRINOS	9	26/88	46	48
STEVEN KRELLENSTEIN	59	75	84	
THOMAS NASTOS	93	104	119	121
ALBERT RESCIGNO	130	139	153	
EUGENE MORETTI	156			

EXHIBITS

<u>GENERAL COUNSEL'S EXHIBIT NO.</u>	<u>FOR IDENT.</u>	<u>IN EVID.</u>
1 -A through 1 -S		3
2 -A	14	25
2 -B	61	64
2 -C	97	99
2 -D, E, F		149

RESPONDENT'S
EXHIBIT NO.

1 -A and 1 -B (Exhibit Nos. 1 -A and 1 -B withdrawn 106 on page 109.)

PROCEEDINGS

JUDGE CHRISTENSEN: The hearing will come to order.

This is a formal proceeding before the National Labor Relations Board in the matter of Pollack Electric Company, Inc., and Local Union Number 3, International Brotherhood of Electrical Workers AFL-CIO Case Number 29-CA-3766 and 29-RC-2533.

The Administrative Law Judge is George Christensen of San Francisco.

May I have the appearances of Counsel?

MR. KINNEY: Elizabeth Kinney, counsel for the General Counsel, 16 Court Street, Brooklyn, New York.

MR. TURCHIN: M. George Turchin, 253 Broadway, New York, New York, attorney for Pollack Electric Company, Inc.

JUDGE CHRISTENSEN: If the formal papers have been examined they can be introduced.

MR. TURCHIN: I have no objection.

MS. KINNEY: At this time I offer General Counsel's Exhibit 1, which is marked 1-A through 1-S in evidence.

JUDGE CHRISTENSEN: It will be received.

* * * * *

4 MS. KINNEY: The parties agree to stipulate as follows:

Respondent amends its answer to admit the allegations contained in paragraphs 1, 4-A, 7, and 19. And the Respondent further amends its answer to deny the allegations contained in paragraph 6.

General Counsel amends the complaint in paragraph to change the address of Respondent to 91 West End Avenue, Brooklyn, New York. And Respondent then admits its answer to admit the allegations in paragraph 3. The Respondent will admit the allegations in paragraph 4-B.

MR. TURCHIN: It is so stipulated.

MS. KINNEY: So stipulated.

JUDGE CHRISTENSEN: If I understand you correctly the Respondent admits 1, 4-A, 7 and 19.

MS. KINNEY: And 10.

JUDGE CHRISTENSEN: Okay. 1, 4-A, 7 and 19.

MS. KINNEY: And Respondent is amending its answer to deny paragraph 6.

MR. TURCHIN: To affirmatively deny paragraph 6. There was no admission. There was no response.

MS. KINNEY: Now, that we have the address for --

JUDGE CHRISTENSEN: You've amended 3, and 3 as amended, is also admitted?

MS. KINNEY: Right.

5 JUDGE CHRISTENSEN: Both parties stipulated to this?

MS. KINNEY: Yes.

* * * * *

MS. KINNEY: Now, this is the parties have agreed to stipulate as follows:

During the year ending December 31, 1973, which appears as representative of its annual operations generally Respondent in the course and conduct --

MR. TURCHIN: Can we go off the record a moment?

JUDGE CHRISTENSEN: Off the record.

(Discussion off the record.)

JUDGE CHRISTENSEN: On the record.

MS. KINNEY: During the year ending December 31, 1973, Respondent in the course and conduct of its business operations performed services valued at \$465 for Man-Size, Inc., a New York Corporation. Doing business as He-Man Shops and or Man-Size Shops, the next figure is \$2,150 for Polymer Research Corporation, \$3,359 for

Alexander Must and Sons Inc., division known as Seacoast Towers, Inc., and \$2,284 for Park Avenue 71st Street Corporation, each of which enterprises are in interstate commerce by reason other than indirect inflows or indirect outflow.

MR. TURCHIN: It is so stipulated.

* * * *

9 MS. KINNEY: George Handrinos.

Whereupon,

GEORGE HANDRINOS

called as a witness, first being duly sworn, was examined and testified as follows:

JUDGE CHRISTENSEN: Be seated.

And give the reporter your name and address.

THE WITNESS: My name is George Handrinos. My address 2155 South Depew, Denver, Colorado.

DIRECT EXAMINATION

Q. (By Ms. Kinney) Did you formerly work at Pollack Electric? A. Yes.

Q. When did you start work there? A. November '72.

Q. Who hired you? A. Mr. -- the foreman, Mr. John Amorgiaros.

MR. TURCHIN: Objection to the answer on the conclusions contained in the answer.

10 JUDGE CHRISTENSEN: I understand the objection. And I will not consider its conclusive use of the title. I will let the testimony stand.

Q. (By Ms. Kinney) What was your position when you were hired? A. How much money I was making, you mean?

Q. No. What was your job? A. Electrician.

Q. How much were you paid when you started? A. 250.

Q. Did you receive any raises? A. What?

Q. Did you receive any more money per hour? A. No.

Letter, 1, everybody we ask about raises, we --

Q. Did you get a raise? A. Yes.

We ask about June and we receive our raise September, end of August to September, if I remember straight.

Q. What was your raise to? A. 375.

Q. How were you paid? A. For November until March or May, I don't remember exactly the month, he was paying me cash, and after when I ask him to give me paper when I was need from immigration, after he started to pay me by check.

11 Q. Who gave you your work assignment? A. Pardon?

Q. Who gave you your work assignments in the morning when you went in to work? A. We was going with John, with his car, in the work, and he explained to us what can do. And we start working. Sometimes he would stay with us to work or sometimes he would go with the other guys.

Q. Did there come a time that Pollack Electric, when there was a union organizing campaign among the employees? A. One day they come. It was Thomas Nastos, and they talk to him in the gas station, they talk to him about the union. And they give it to him some cards. After he come back in the work, he talk to us about, and we -- also we ask John because we don't know very good, and he explained to us, the union, it's a good idea for us, an employee, but Mr. Pollack he don't like the union.

MR. TURCHIN: Objection.

JUDGE CHRISTENSEN: Basis?

MR. TURCHIN: Conclusion.

MS. KINNEY: This is a conversation.

JUDGE CHRISTENSEN: He stated --

MR. TURCHIN: He said that he explained that Mr. Pollack did not like the union. I ask that it be stricken, the --

12 JUDGE CHRISTENSEN: That portion of the answer shall be stricken, he complained about the union.

Q. (By Ms. Kinney) What did John say to you in that conversation? A. He say, Mr. Pollack, he don't like the union, and if we join the union we're going to be without jobs. So -- but before -- so he broke the card.

Q. Who did? A. Thomas. He saw we don't like the union, and don't think -- broke the card, he broke the card, so the foreman, he don't have -- he don't think we like to go in the union and lose our job.

We don't like to lose our job.

MR. TURCHIN: I object that what he thought and ask that it be stricken.

JUDGE CHRISTENSEN: That portion shall be stricken.

Q. What happened after that? A. But -- oh, before that --

MR. TURCHIN: At this time I would request that the witnesses be sequestered, and that the testimony of this witness be taken without the presence of the individual witnesses.

I think that what we're seeing here is a situation where conclusions are being testified to by the witness and under those conditions I think it would be required that the witnesses be sequestered, because 13 this is almost a reflection to the witnesses who will testify.

MS. KINNEY: General Counsel would object.

JUDGE CHRISTENSEN: These witnesses are -- General Counsel has already advised me, are the discriminatees alleged in these complaints so are entitled as a matter of right to be present in the hearing room.

MR. TURCHIN: Except, of course, where you have a situation where the witness who is testifying is testifying as to conclusions rather than as to fact the situation does change. And the testimony of the witness then triggers an area where the next witness can change or testify in a manner picking up the --

JUDGE CHRISTENSEN: I'm afraid that may happen in the case -- every case I've been in where one or more discriminatees hears the testimony of other discriminatees but does not alter their legal right to be present and hear the testimony involving their economic well being.

And as far as the conclusions, I of course have upheld objections to the statements of conclusions and I will continue to uphold them.

So I don't see any prejudices as a result and the objection is overruled and the witnesses shall not be sequestered.

MS. KINNEY: Would you mark this, please, General Counsel's Exhibit 2-A.

14

(The above referred document was marked General Counsel's Exhibit No. 2-A for identification, as of this date.)

Q. (By Ms. Kinney) I show you this card, which is marked for identification as General Counsel's Exhibit 2-A, and ask you if you have ever seen that before?

(Handing.)

A. That's my card when I sign, when I was in the union.

Q. You signed that card? A. Yes. That's my signature.

Q. Is that your signature? A. Yes.

Q. Did you fill out the whole card? A. My writing.

Q. Did you write the date on the card? A. Yes.

Q. When did you sign this card?

MR. TURCHIN: It speaks for itself. Objection.

A. I signed this card --

Q. What were the circumstances under which you signed this card?

JUDGE CHRISTENSEN: Objection sustained.

MS. KINNEY: I would like to just introduce the fact that other people were present at the time when he signed the card and I don't see --

15 JUDGE CHRISTENSEN: The objection was sustained to the previous question which was to ask him what date he signed the card.

MS. KINNEY: The next question is, I said under what circumstances did he sign the card --

Q. Under what circumstances did you sign the card?

MR. TURCHIN: I'll object to that question on grounds it is irrelevant and immaterial and calls for the operation of the witness' mind.

JUDGE CHRISTENSEN: Well, it's rather general but I think it's preliminary. Objection overruled.

You may answer. You may answer.

THE WITNESS: I was on vacation in my country and when I come back, I find out everybody in the shop that was ready sign the same card, they was in the union, and they ask me if I want to join the union.

JUDGE CHRISTENSEN: Who asked you?

THE WITNESS: All the guys work together.

JUDGE CHRISTENSEN: Who?

THE WITNESS: Thomas, Gus, Al, everybody. That's happened before with the cards, before Thomas come to the gas station -- just before I say what's happened with Tommy Nastos, and have the conversation with the foreman about the union when --

MR. TURCHIN: Objection.

16 Q. (By Judge Christensen) With who, John Amorgianos?

A. Yes.

Q. Mention the name -- A. John Amorgianos.

MR. TURCHIN: I would object as not responsive to the question.

JUDGE CHRISTENSEN: All right. I'll waive the testimony.

You may continue.

A. When I come back from my country, they ask me, the guys, if I'm going to join the union. I say, yes, I'd like to join the union. And we go in the union to sign the card.

Q. You went to the union office? A. It was me and another guy, Sal, we went to the union office, me, him, Thomas Nastos and Gus and --

Q. Who is Gus?

Gus who? A. Moustogiannis.

Q. And -- A. And I think Al.

MS. KINNEY: He's names in the complaint.

A. I can't remember the last name.

17

Q. You're talking about Albert Rescigno, is that who you're talking about? A. Yes.

And I signed the paper and after we left.

Q. You signed it at the union office? A. Yes.

Q. That's this card? A. The same -- exactly the card -- the one she just showed me.

Q. (By Ms. Kinney) What happened after that? A. After that it happened with cards when I just told you in the beginning, right. And after a few -- at November 13, it was Friday, it was payday, and everybody was waiting in the shop to receive our check. And Mr. Pollack, he open his mail at this time.

He has an envelope and he says, oh, that's for a union, and I know what they want, because many times I receive this kind of letters. Anyway, he open the letter. He read the letter. And he says someone sign from the union -- join the union.

And he asked us who join the union. Nobody answer. And after John Amorgianos start to talk in English and in Greek to us, who join the union. Again nobody answer. And after the tell them to ask the Greek guys and he ask us in Greek what's happening, who sign the union and he tried to make us to tell him who joined the union.

18 MR. TURCHIN: Objection.

Q. What did he say to you?

JUDGE CHRISTENSEN: I'll weigh the testimony.

Q. Try to say what he said to you? A. And he said to us, act like a man, and say the truth, what's happened. Anyway, Thomas Nastos says yes, I signed from the union, I signed the union, and Gus Moustogiannis also says I joined the union too. And he tell them to -- turned to them and he says why you do that.

JUDGE CHRISTENSEN: Who is this, that turned?

THE WITNESS: John says what --

JUDGE CHRISTENSEN: John Amorgianos?

THE WITNESS. Why you do that and you don't tell me nothing and you put a knife in my back. After that he explained in English to Mr. Pollack what's happened. Mr. Pollack, he don't say nothing. He pay us and we left.

Q. (By Ms. Kinney) And what happened after that?

A. After that, the next day --

MR. TURCHIN: I object to -- I ask everything be stricken other than the conversations testified to by the witness. As to any conclusions the witness has drawn in that answer I ask that it be stricken.

JUDGE CHRISTENSEN: I shall evaluate the testimony as to what was said by each of the participants in this testimony. Any conclusions I shall disregard.

Q. (By Ms. Kinney) What happed after that? A. The next day was Saturday. I was at Thomas' house, and John called Tommy

and they started to talk together. And after -- about what Tommy explain to me. He says no more -- Tommy -- John says to Tommy, you don't have any more work --

MR. TURCHIN: I object to any conversations --

JUDGE CHRISTENSEN: I shall not attribute the conversation or remarks to John Amorgianos. But I shall consider as testimony what Tommy Nastos said to this witness.

MR. TURCHIN: That's clearly hearsay.

JUDGE CHRISTENSEN: Well, if it comes out that Nastos advised him that he was laid off, then it becomes a question that's how he got his notice he was laid off, so it may be material to the issues.

The witness may answer.

Q. (By Ms. Kinney) You can continue with what Tommy told you. A. Tommy says to me, you know John tell me, because I joined the union, I signed for the union, no more work for me in the shop. I mean for him, for Tommy.

JUDGE CHRISTENSEN: Yes?

A. I say, okay. After we start calling each other, all the guys 20 to find out what's going on. And like we call Al, we called Gus, everyone. And we find out the same thing happened to them. After I left for Thomas' house and I was going home.

And John Amorgianos called my house --

Q. How do you know he called? A. Because it was my wife home and my wife tell me that. And she says to me John called here and ask about you, and he tell me when you come here to call him. So I called John, and I said to him, what's happening? What do you want?

And he says to me, did you talk with the other guys, the other employees? I say yes, I talk with them. So he said you know the

news, no more work for everybody. I says no more work, no more work. That's it.

Q. Then what happened after that? A. After that we decided all together to go Monday afternoon in the union office in Brooklyn to tell them what's happened, to tell them all the story, and because we don't know what we suppose to do.

We tell them the story, and -- because we are close to the shop we decided to go to the shop to pick up our tools. We go in the shop, and we wait about a little while -- it was almost 4:30, so someone come and open the shop Mr. Amorgianos, he come in the shop. He open the shop.

21 And we go inside and we start to pick up our tools because they don't want us anymore to work in the shop. At this time Amorgianos says to us, when we was ready to go out, wait, Mr. Pollack, he come in a few minutes. And also at the time when we start to pick up our tools Mr. Amorgianos goes to the back room and he make a phone call.

Anyway, after a few minutes Mr. Pollack come back, he come inside, and he says to us, nobody has to say something, anything. We say, what do we have to say? You fire us, you don't want us anymore or the work, so we go, pick up our tools and we go.

He says to us, no, I don't fire you because -- we say yes, your foreman -- your foreman call us, everyone, and you must know that, he must tell you that, Saturday, and he fire everyone. He says, I am the boss, I pay you, and I fire you.

But so I don't fire you, but I let you off because the business is low down. I say all right, you pay us -- you don't fire us, what can we do. He say go home and I'm going to call you when I need you. We go home and the whole week we were sitting home --

Q. Do you remember anymore in your conversation with Mr. Pollack and Mr. Amorgianos on that Monday afternoon?

A. Yes.

Q. What do you remember? A. Like he asked us why you join the union.

22 Q. Who is the "he" now? A. What?

Q. Who is the he you are referring to? A. Mr. Pollack, he asked us why we joined the union. And we tell him because it has better pay, better benefits, better everything. And he says -- Mr. Pollack says, why before you join the union you don't tell me this so we come to make something like agreement between us. That's what I remember.

Q. Okay. Fine.

Then what happened after that? A. Yes.

After that we pick up our tools, and -- oh, excuse me, at this day also Mr. Pollack -- I don't remember if it was Monday, this day or the next Friday, December 7th -- but he pay me 23, 24, something to this, dollars, because about three, four weeks ago I was hurt in the job, I stepped on a nail, and I was to the doctor, he give me -- he give me injuections, he give me medicine, all this.

And I pay all these bills. And after I was three, four days in bed with a fever, I was going to the hospital, and he tell me this money it was sent from the hospital --

MR. TURCHIN: I object to this. I think we're going into material that is irrelevant --

JUDGE CHRISTENSEN: What's the relevancy?

MS. KINNEY: No. We don't have to go into it.

23 JUDGE CHRISTENSEN: All right. Ask another question.

Q. (By Ms. Kinney) The only --

MS. KINNEY: Well, you're disregarding the history behind this payment, is that what you're telling me?

JUDGE CHRISTENSEN: I asked you whether it was material. You said it wasn't particularly material so what's --

MS. KINNEY: The history I don't think is particularly material.

JUDGE CHRISTENSEN: All right.

Q. So you're finished with the conversation the best you can recall on that Monday, right? A. Yes.

Q. What happened after that? A. After that he told me, Wednesday night, Mr. Pollack, he call me Thursday night, he tell me to come back the next day for work. I come back the next day and everybody was in the shop in the morning for work. We work this day, one was Friday, and he pay us, and after he tell us now I'm going to call you again when I will have again work for you.

And I ask him, do we have to leave our tools here or have to take home again. He says take your tools home, don't leave it here and I'm going to call you.

24

Q. Where did you work on that Friday? A. I was working -- all together I was working in the same place in Brooklyn, in big factory --

Q. In a big factory in Brooklyn? A. Big factory.

Q. Who else was working with you that day? A. Al Green, Thomas Nastos. I remember we was all together.

Q. And what job did you do that day? A. That day, oh, it was hanging some fixtures, we make a few new receptacle lights like this, and also have a big panel --

Q. Panel? A. Panel, yes.

Q. What was the panel for? A. I don't remember exactly. But it was a new -- for a new lighting inside, for machine, for this. It was big panel for a -- for much power.

Q. And did you finish the job that day? A. No.

Q. To your knowledge, how much work was left on the job? A. I don't know if he has more of this job, but he has from this job when we left out it was at least --

MR. TURCHIN: I object to anything further.

JUDGE CHRISTENSEN: Well, let him complete the answer and then I'll see what I want to strike.

25

MR. TURCHIN: Again, once the witness says again he doesn't know, I think from that point on it's irrelevant and immaterial.

JUDGE CHRISTENSEN: I will let him complete the answer.

Q. (By Ms. Kinney) What work was left on that job?

A. It was four or five more days work.

MS. KINNEY: I'd like to offer General Counsel's 2-A in evidence, which we substitute copies for.

MR. TURCHIN: I don't think it's material or relevant to the issues. I think that the testimony has been given, and to submit the card is simply burdening the record.

JUDGE CHRISTENSEN: The complaint reads "on or about October 4, 1973, a majority of the employees of Respondent signed cards designating the union as their exclusive representative --"

This card is relevant to the allegations contained in that portion of the complaint.

Any other basis for objection?

MR. TURCHIN: No. That's the only basis.

JUDGE CHRISTENSEN: The exhibit shall be received.

(The above referred document marked General Counsel's Exhibit No. 2-A received in evidence, as of this date.)

26

MS. KINNEY: I have no further questions. Excuse me I have one question.

Q. (By Ms. Kinney) When you worked at Pollack Electric who were the employees that worked with you? A. In the beginning?

Q. In the beginning and then later too? A. In the beginning it was me, Al and some other guys which they laid off.

Q. They were later laid off? A. Yes.

Q. And then later? A. Later come Thomas Nastos, later come Gus Moustogiannis, and Steve and Jim, and also Salah.

MS. KINNEY: I have no further questions.

CROSS EXAMINATION

Q. (By Mr. Turchin) When you first came to work for Pollack Electric, did you talk English very well? A. No.

Q. So that someone had to speak to you in Greek so that they could get the background, to find out something about you?

A. When I come, start work for Pollack Electric, my English, it was not so bad so to don't understand what someone has to say

27 to me. It was good enough to understand. The only difference was I don't -- I didn't know at this time the names of the material when I was using.

Q. So that the one who spoke to you was John. A. The foreman, John Amorgianos.

Q. And he spoke to you in Greek? A. He spoke to me in Greek, but also he spoke to us many times in English because we have American guys and he don't want to -- the American guys to feel bad when all the time he spoke to us in Greek.

Q. Did Mr. Pollack speak in Greek? A. No.

Q. So Mr. Pollack really never spoke to you, except through John? A. Yes.

* * * *

29 Q. * * * Do you know when you first started to work for
30 Pollack? A. If I remember what?

Q. When you first started to work for Pollack? A. I remember.

Q. If I told you that you started March of 1973, would that help you remember? A. No. That's lying.

Q. When did you come to this country? A. October 13, '72.

Q. And you didn't work then for two months, is that right? A. I work for Pollack end of November. I start with him end of November of '72.

* * * *

31 Q. And did you work where you gave directions, you told the helpers what to do? A. The foreman tell me what I have to do.

* * * *

34 Q. (By Judge Christensen) What counsel is saying, sometimes the blueprints don't show where the wires should go, how they should run, from one place to another.

That's true? A. Yes.

Q. Okay.

Somebody has to decide where that wire should go? A. Yes.

Q. Who does that?

Who makes that decision, where the wire should go?

A. Sometimes foreman tell me, you have to go this way, sometimes I make the decision.

Q. Okay. A. Or like going in a house to make lighting 35 like this, it was a new house, it was sometimes house -- burned house, you have to make the whole lighting from the beginning, one fixture here, one fixture here, one light here. He show me the plans where he work --

Q. Who showed you where he wanted it? A. The foreman.

Q. John? A. Yes.

Q. John. A. John. He showed me where he wanted it and I run my wires the way -- it was more -- it was better for my boss, and of course the owner of the house.

Q. (By Mr. Turchin) Do you know who told John what to do?

MS. KINNEY: Objection, Your Honor. Objection.

JUDGE CHRISTENSEN: If he knows, he may answer.

MS. KINNEY: If you know.

A. Mr. Pollack tells -- night when everybody left they stay together in the shop and they talk about the business and the job.

Q. Now, didn't John also work on the jobs? A. Yes.

Q. Didn't he do the same work you were doing?

A. Yes.

Q. Now, do you remember when John called you after

36 November 30th on the telephone? A. Yes.

Q. All right. A. I remember. He don't call me. I call him.

Q. You called John? A. Yes.

He called my house, he don't find me over there. He tell me wife, tell George when he come back to call me.

Q. You were very friendly with John, weren't you?

MS. KINNEY: Objection.

I don't see any relevance to that.

MR. TURCHIN: Foundation.

JUDGE CHRISTENSEN: All right. He may answer.

A. Yes.

Q. Do you remember John telling you that the work was slowing up, and that it was almost over? A. You are talking about the phone call?

Q. I'm talking about the phone call. A. The phone call, I call him in his house, like my wife tell me, and he says to me, do you talk -- do you speak with the other guys, the other employees? And I say, yes. He says, so, you know what's happened. And no more work for everyone. And I said that's it.

JUDGE CHRISTENSEN: Counsel is asking you whether John said something else?

37

Q. (By Mr. Turchin) You came back to work for Pollack for one more day? A. Yes.

Q. And when you came back to work for Pollack for one more day you saw that the work was almost complete on that job; isn't that correct? A. No.

Q. Well, how much longer did you think there was to do on that job?

How many more days? A. I say before almost four or five days.

Q. How long had they worked on that job?

How long did they work before that on that job?

MS. KINNEY: Objection.

How would he know for sure?

MR. TURCHIN: I'm asking him.

MS. KINNEY: If you know.

JUDGE CHRISTENSEN: Objection is overruled.

You may answer.

A. At that job, one day was going to work two guys, another day was going to work three guys, another day was going to work one guy, so I don't know.

Q. So that there were many people working at different times on that job? A. Many people work different times at that job, and everyday almost going to work in different jobs.

Q. But when you came back on the Friday you say about four or five days more work on that job? A. Yes.

39

Q. (By Mr. Turchin) And did you finish the work on these jobs?

MS. KINNEY: Which jobs?

Q. The jobs you just testified you were working on?

A. The only job I remember finishing, it was the big building on Park Avenue.

Q. That got finished? You remember finishing that job?

A. I remember because, Al, he was the last one working over there, he says it's finished, that's it.

Q. And the other jobs, were they one day jobs or two
40 day jobs? A. The other jobs like for example, the job when I would say before in the wood factory, I was not the last one when I was here about the guys who worked over there, they say it was more work over there.

Q. How much more? A. I don't know.

Q. A day or two?

MS. KINNEY: He wasn't there, he said.

A. I wasn't there.

Q. You're familiar with what had to be done? You were there. How much more work had to be done?

MS. KINNEY: Objection, Your Honor.

JUDGE CHRISTENSEN: The witness already said I don't know.

The objection is sustained.

MR. TURCHIN: Can I pursue and see if I can refresh the witness' recollection?

JUDGE CHRISTENSEN: Okay.

Q. (By Mr. Turchin) When you went to work in the factory --

MS. KINNEY: Let's identify the factory.

Q. You're talking about a wood factory, is that right?

A. Yes.

Q. When you went to work at the wood factory, what job
41 did you have to do? A. I was hanging fixtures.

Q. How many more fixtures had to be hung after you left? A. If I remember I think I finished the fixtures.

Q. So that you finished the job that you had to do?

A. Yes.

Q. So that as far as you knew the work was done at the wood factory, you finished it up? A. I think. I will say before, I hear from the other guys when they was the last guy to work on this job, they say it's more work done.

Q. But you didn't see more work?

You finished the work -- A. I told you that before.

Q. You finished the work that had to be done to hang the fixtures, that's what you did? A. That's work when I do before the guys goes, a month ago. After a month ago, when I was finished the fixtures, the other guys still goes over there to work.

Q. Did they finish --

JUDGE CHRISTENSEN: Mr. Handrinos, are you saying that you installed some fixtures at this wood factory?

THE WITNESS: Yes.

JUDGE CHRISTENSEN: Are you also saying that from your observation there was additional electrical work still to be done at the time you finished hanging those fixtures?

42 THE WITNESS: Yes.

JUDGE CHRISTENSEN: But you didn't see that it was done?

THE WITNESS: Exactly.

* * * * *

45 Q. But you knew, of course, on the last job, didn't you, on December 7th, you knew it wasn't complete? A. I knew because when you know, you have to hang a fixture, one fixture, and you put only the hangers over there, in the ceiling, you know that you need half hour or one hour to put the rest.

Q. That's right. A. So when I was working in the apartment, and I saw the big job was suppose to be done, and it was not done when we left, Friday afternoon, I know this work need four, five days to be done.

Q. Absolutely, that's right, Mr. Handrinos. That's what I'm asking you.

On the other jobs that you worked on was there anymore work that has to be done that you knew of? A. No.

Q. All right.

So that the only job that you knew at the time that you left that still had to be completed was the last job where there were four or five more days work? A. Yes.

* * * *

REDIRECT EXAMINATION

Q. (By Ms. Kinney) When you worked at Pollack Electric, did you ever speak to Mr. Pollack? A. Sometimes.

Q. What language did you speak to him in? A. It was in English.

Q. You testified that John would tell you each day what your jobs were going to be? A. Yes.

Q. Did he tell you who it was -- who was going to go with you on the job? A. No. He would decided --

Q. He decided? A. He take us, like -- he put -- everybody was put with our tools and what we need in his car, we go in the car, we use his car or Steve's car or Gene's car, and we go together, and he start to tell us that's the job, you stay with him, and give us direction what we have to do.

Q. Was everybody present then when you got your directions or did he just give them to you? A. No.

He don't give it just to me. He give it to the guy when he suppose to work in this place.

47 Q. And what about the job?

Who did he tell about the job? A. What do you mean?

Q. How do you know what you were suppose to do when you got there? A. He would explain to me what I have to do, except if he was planning to stay with me.

Q. How often did John work with you on jobs? A. Many times.

Q. The whole day? A. When he was working with me, sometimes he was working the whole day, sometimes he was working a few hours, he was going to seeing the other job, how it's going, or in the ship to see if it's any call --

Q. So sometimes he stayed with you and sometimes he didn't? A. Yes.

Q. When Mr. Turchin asked you who told John about the jobs, I believe you testified that John and Mr. Pollack used to speak in the back of the shop after work about the jobs.

Were you present when they talked about the jobs? A. Sometimes.

Q. What do you remember them talking about? A. I don't remember what about they was talking, but I remember they 48 was talking about the job, of how the job was going to be done -- but also -- I never sit -- stay around to hear what they say --

Q. So you left? A. Yes.

Q. Did you usually work at a job until it was finished or did you get switched around? A. Some of the jobs switched around, some of the jobs I finish. Depends how John decide to us to work.

MS. KINNEY: No further questions.

RECROSS EXAMINATION

Q. (By Mr. Turchin) When John would give you instructions, would he give you instructions in Greek? A. If I was with a Greek guy, he give me instructions in Greek. Sometimes he give me instructions in English and Greek mixed up.

Q. Did anyone else give you instructions at Pollack Electric? A. No.

* * * *

52 Q. (By Judge Christensen) Who actually recruited and hired you to go to work for Pollack?

Who talked to you about going to work for Pollack? Who did you talk to? A. Mr. Amorgianos.

Q. What did he say to you?

What did he say, do you want to go to work for Pollack or how did it happen? A. He says to me, when I was in the shop, he explain to me the way --

Q. How did you happen to come to the shop?

How did you happen to come to the shop?

How did you happen to go there? A. I was -- through agency.

Q. As the man then who interviewed you when you came to the shop, Mr. Amorgianos? A. No.

I was in the shop, and they tell me you have to find -- you have to ask about Mr. Amorgianos, he is the foreman, and he's Greek and he --

Q. Who told you that? A. The agency.

Q. The employment agency told you to see Mr. Amorgianos?

A. Yes. They told me it's a Greek guy over there and you have to talk to him.

53 Q. So you did? A. And I did. And Mr. Amorgianos explain to me the way, the work, how much they can pay me, and everything.

Q. Did he also say you're hired? A. Of course.

Q. He told you how much you were going to be paid?

A. Yes.

Q. After you were hired, do I understand your testimony, that Mr. Amoriganos would take you to a job and assign you to what you were to do on this job? A. Yes.

Q. He would tell you where, how to run the wires and --

A. Yes.

Q. Did he ever reprimand you, say you did lousy job here or tell you you did bad work or otherwise tell you to straighten up?

A. Sometimes when I make a lousy job, when I make something bad or I make some mistake, he says to me, no this is not the way, he want this way, and I fix it.

Q. Did he also give the same kinds of instructions and do the same thing as the other men who worked with you? A. Yes.

Q. Did you ever ask him for any time off when you worked, where you wanted a day off, or you were sick or you wanted to see 54 a doctor? A. Yes.

I asked him for time off August '72.

Q. Who did you ask? A. I asked Mr. Amorgianos. And he talk to Mr. Pollack, and they say yes, you can have it.

Q. Who told you you could have it then? A. Mr. Amorgianos.

MS. KINNEY: I think there's a problem here on the year.

Can you think about the year, was it '72 or '73?

MR. TURCHIN: It's got to be '73.

THE WITNESS: August '73, yes.

Q. (By Judge Christensen) Now, you say that at one time you asked for a pay increase; is that right? A. For raises, yes.

Q. Who did you ask? A. Mr. Amorgianos.

Q. Did he tell you that you got it or -- A. I got it after three months.

Q. Was he the one who told you you had it? A. Yes.

JUDGE CHRISTENSEN: I have no other questions.

* * * *

55 Q. (By Mr. Turchin) When you spoke to John, when you were discussing the job, wasn't Mr. Pollack present?

A. You mean in the beginning?

Q. Yes, in the beginning. A. When I come the first day in the shop?

Q. Yes. A. I was in the shop. Mr. Amorgianos he was down in the basement. I don't know who was boss. I don't know nobody. And I ask, I think it was Mr. Pollack, where is Mr. Amorgianos.

Q. Mr. Pollack was in the shop? A. He was in the shop.

Q. Did you hear Mr. Amorgianos speak to Mr. Pollack?

A. If I hear Mr. Amorgianos --

Q. Didn't Mr. Pollack ask Mr. Amorgianos questions?

A. Yes.

56 Q. About what he was talking to you about?

Don't you remember that? A. Let me put -- let me answer how this happened.

Q. All right. Just -- A. I don't understand that's why.

JUDGE CHRISTENSEN: All counsel is getting at, did Mr. Amorgianos discuss hiring you with Mr. Pollack before you were hired?

THE WITNESS: No.

Q. (By Mr. Turchin) How do you know?

JUDGE CHRISTENSEN: He didn't go and talk to Mr. Pollack and then come back and tell you you were hired?

THE WITNESS: I was talking with him.

JUDGE CHRISTENSEN: Did he check with Mr. Pollack before he hired you.

THE WITNESS: I think so.

Q. (By Mr. Turchin) You remember checking with Mr. Pollack? A. I think so. He suppose to. I don't know. It's two years now, three years. How I remember now what's happening one day.

Q. In other words, you remember that Mr. Amorgianos had to speak to Mr. Pollack?

That was the procedure that was used in the shop?

57 A. I say I don't remember what he was doing at this time.

MS. KINNEY: Your Honor, he's tried to answer this question.

JUDGE CHRISTENSEN: Did you say you didn't see Mr. Amorgianos talk to Pollack before you were hired then?

You didn't see him or hear him talk to Pollack the day you were hired about hiring?

THE WITNESS: I was going down to the basement. I talk to Mr. Amorgianos.

Q. (By Judge Christensen) Did he hire you right then and there? A. Yes.

Q. He didn't go and check first before saying you're hired? A. I don't remember.

Q. Okay. You don't remember. That's all.

Okay. Anything further?

* * * * *

59 MS. KINNEY: Steven Krellestein.

JUDGE CHRISTENSEN: Hold up your right hand, please. Whereupon,

STEVEN KRELLENSTEIN

called as a witness, first being duly sworn, was examined and testified as follows:

JUDGE CHRISTENSEN: Be seated.

Give the reporter your name and address.

THE WITNESS: Steven Krellenstein. I live at 1226 East 56th Street, Brooklyn, New York.

DIRECT EXAMINATION

Q. (By Ms. Kinney) Did you formerly work at Pollack Electric? A. Yes.

Q. When did you start working at Pollack Electric?

A. I started working at about August, September, the end of August, the beginning of September of 1973.

Q. Who hired you? A. Well, I went to the shop and I had spoken to John, which he told me that he would speak to Mr. Pollack, the owner, and that evening I had received a phone call from Mr. Pollack asking me if I was able to start the next day.

60 Q. And did you? A. Yes.

Q. What was your rate of pay? A. Two dollars per hour.

Q. What was your position? A. Helper.

Q. Who did you help? A. I would help the other mechanics.

Q. Did you ever receive any raises? A. Yes.

Q. Would you tell us about those, please? A. I received only one raise, 50 cents per hour.

Q. Who told you you got your raise? A. Nobody had stated it. I just received a raise in the pay.

Q. How were you paid? A. I was paid sometimes by cash and I was also paid by check, not too often though.

Q. Who gave you your work assignments? A. Well, we would all -- I would come in to the shop, and John would, you know, we would load up the car with the materials and the tools in the car,

and we would go with John to the jobs, different job locations, and some men would stay at one, some men would go to another one. Or we would be told, you know, like I had a car --

61 Q. Who would tell you? A. John would tell me. Or -- yes, John would tell me you know, to take this or this person to a job site, and work there.

* * * * *

62 VOIR DIRE EXAMINATION

* * * * *

65 Q. (By Ms. Kinney) Let's move beyond the signature on cards.

Did anything happen in connection with your employment at Pollack Electric or did you continue working there? A. Well, nothing really happened until one evening when the question arose of who signed for the union.

Q. Do you remember when that was? A. The exact date I don't remember, no.

66 Q. What day of the week, do you remember? A. It was, I believe, on a Friday.

Q. And who was there? A. The entire shop. It was myself, Gus, George, Tommy, Gene, and Al.

Q. And was Mr. Pollack present? A. Pardon me?

Q. Was Mr. Pollack present? A. Yes. Mr. Pollack was there, and John.

Q. And what happened? What was said? A. Mr. Pollack had called John in to the back of the store, and then John, I don't know what Mr. Pollack had said to John. Then John came out and he asked who signed something for the union. And then he spoke words in Greek, and then he spoke words in Greek and then

I believe one of the other employees answered. And he went back and talk to a Mr. Pollack.

Q. Do you remember any more of that conversation?

A. John had went back to Mr. Pollack. If I'm not mistaken, I'm note sure, but he might have said that --

MR. TURCHIN: Objection as to what he might have said.

JUDGE CHRISTENSEN: Sustained.

Q. If you remember the conversation, you know, relate it, and if you don't remember you can say you don't remember.

67 A. I don't remember fully.

Q. What happened after that? A. Well, John had came back or -- Mr. Pollack, I believe, excuse me --

Q. Did you work the next day? A. I don't believe so. I am not sure.

Q. What happened after that? A. Well, we was told by John that same evening, I believe it was -- I'm almost positive it's John -- that he will call us and contact us and let us know if there will be work or something. And we had left. And I believe I received a phone call that weekend from John asking, you know -- talking to me, you know, saying that --

Q. What did he say to you? A. He asked me if I am interested in Local 3 or interested in working with Pollack Electric he explained to me if I tried to get into Local 3, I wouldn't have a job with Pollack Electric, I wouldn't make no money. He said if I stay with Pollack Electric I would have a job and make money.

And I explained to him that I do want to work for Pollack Electric, not saying nothing about Local 3. And he said that he will speak to Mr. Pollack, and he'll get back in touch with me.

Q. And then what happened after that? A. Well, I think 68 in the middle of the week he had called me back and said he had spoken to Mr. Pollack, and that he feels -- that he felt that I

was a man in what I was saying, and that Al also he felt Al also was a man at what he was saying and he was going to take Al and I back to work.

Q. Prior to that, did you pick up your tools at Pollack Electric? A. Yes.

The employees of the shop had met on a Monday afternoon, I believe it was, and we went down to the union clubhouse on Gravesend Neck Road in Brooklyn, we had went down to the union clubhouse on Gravesend Neck Road in Brooklyn, and we were discussing the matters with members over there.

And then we decided to pick up our tools and go the main union hall in Queens, Flushing, Queens. We had went to the shop to pick up our tools. We waited about five minutes until John opened up. And we waited to take our tools.

And John said to wait, don't take nothing out yet, to wait and wait until Mr. Pollack came. Mr. Pollack came about ten minutes, maybe five minutes later.

Q. Did Mr. Pollack say anything when he came in?
A. Yes.

Mr. Pollack has asked us what was happening -- what was going on, and we had explained to him that John had called up everybody and said, you know, to look for -- he had told some of the other employees --

69

MR. TURCHIN: Objection.

JUDGE CHRISTENSEN: Sustained.

You can only testify as to what John told you.

Q. (By Ms. Kinney) What was said to Mr. Pollack by you or other people that you heard? A. Mr. Pollack had asked why we did this. And he said that we had -- we had explained to him that we had went and we signed up for the union for benefits that we didn't have at this time, and for advancement for ourselves.

Q. Do you remember who said that or was it just one --

A. I don't remember who said that. But it was said. It was said, a clear explanation was said of why we did what we did.

Q. What did Mr. Pollack say? A. Mr. Pollack said there are better unions other than Local 3 that he could have gotten us into if we had came to him first and talked it over with him.

Q. Do you remember anything else he said? A. Then he said that we had gotten ourselves into trouble for this because we'll never get into the union, and if we would have -- if we wouldn't have gone behind his back he would have helped us get into a different union which he said would be better than Local 3.

70 Q. Did you continue working at Pollack Electric? A. I believe I went back to work for a few days after this incident.

Q. Did Mr. Pollack say anything about lack of work in that conversation? A. He had mentioned that John -- he had mentioned that there was lack of work, that's the reason why he was laying everybody off. But if there is work, work does come up, that he would call us back.

Q. And you, I believe, testified that you received a phone call a few days after that; is that right? A. Yes.

I received a phone call to come into work in the middle of the week with Al. And I --

MR. TURCHIN: Pardon me, did you say Al call you?

THE WITNESS: No. I received a phone call, I believe, from John, telling me to come into work. And this was in the middle of the week, I believe. And I had called -- I believe John had told me that Al was also going to come in.

Q. (By Ms. Kinney) And did you go back to work?

A. Yes.

Q. Now, after you went back to work with Pollack, and Al was working there too, is that right? A. Yes. We had worked together.

71 Q. Did you have any further conversations with either Mr. Pollack or with John when you went back to work? A. I had a further conversation with John. The precise time I don't remember. It's possible that I had it with him after I had went back to work.

Q. What was the substance of that? A. The conversation was, you know --

MR. TURCHIN: Can I have an objection to that conversation.

JUDGE CHRISTENSEN: When, were, what how, when. Objection is based on failure to lay a foundation.

Sustained.

Q. Did you ever discuss the union with John? A. Yes.

MR. TURCHIN: Objection.

That's a leading question.

MS. KINNEY: He's already testified that he did.

MR. TURCHIN: I understand.

JUDGE CHRISTENSEN: Objection overruled.

Q. (By Ms. Kinney) Did you have any further discussions that you recall about the union with John? A. Well, I had spoke to John in the shop one time when I went to pick up materials.

MR. TURCHIN: Objection. Not responsive.

72 JUDGE CHRISTENSEN: It sounds preliminary to me.

Objection overruled.

MR. TURCHIN: That's the point. These are now leading questions. She asked whether he had any conversations.

It's not responsive.

JUDGE CHRISTENSEN: You may complete the answer.

Go ahead.

A. I had explained to John that all we are looking for in the interest of ourselves are better advancement opportunities, security, things of this nature. John had explained to me that George, Tommy and Gus would have like a chance at all to get into the union because of their

language barriers, and I did not -- he explained that I did not know enough to get into the union.

The only one possibly to get into the union would be Al.

Q. Do you remember John saying anymore about the union, asking you anything more about the union? A. Well, he asked me if I still wanted the union. And I had explained to him that I just want to work, you know, in the electrical field, and I wanted to have a good future for myself as well as the other members of the shop too.

Q. Are you still working with Pollack Electric? A. No.

Q. Would you describe the circumstances under which you
73 were separated from employment there? A. As I see it it was because of union activity.

Q. No.

MR. TURCHIN: Objection.

Q. What happened?

JUDGE CHRISTENSEN: The answer will be stricken.

Q. What happened?

Did anybody say anything to you, and is that why you were not working, and if so, what was said to you? A. I was told --

MR. TURCHIN: I will object again. No foundation. We're doing the same thing.

JUDGE CHRISTENSEN: Sustained.

Q. Are you still working for Pollack Electric?

MR. TURCHIN: Objection.

It's been answered.

JUDGE CHRISTENSEN: Sustained.

What was the last day you worked for Pollack?

THE WITNESS: I believe it was sometime in the first week of January.

Q. What year?

JUDGE CHRISTENSEN: Did you have a conversation with anyone prior to your last day of employment from management, with Mr. Pollack or Mr. Amorgianos?

THE WITNESS: Just on the day I was laid off again.

74

JUDGE CHRISTENSEN: Okay.

Who did you have a conversation with?

THE WITNESS: I had, I believe, with Mr. Pollack himself.

JUDGE CHRISTENSEN: What did he say to you and what did you say to him?

THE WITNESS: He told me and the other two men that were there -- do I have to give the names of the other two men?

JUDGE CHRISTENSEN: Yes.

THE WITNESS: Al Rescigno and there was another guy there that had just started working that week, he had worked that week with me. He had told us three that because of lack of work he would lay us off, if the work comes up again, he would call us back.

Q. (By Ms. Kinney) What were you doing on your last day of work at Pollack Electric? A. I worked in Polymer Research Corp.

Q. What were you doing? If you remember? A. I -- Al Rescigno and myself and another man were putting up fixtures. We had put receptacles along a workbench, fixing receptacles, jobs of this sort.

MS. KINNEY: I have no further questions of this witness.

* * * * *

75

CROSS EXAMINATION

* * * * *

77

Q. (By Mr. Turchin) Now, do you remember signing a statement for the N. L. R. B.? A. Yes, I do.

Q. And do you remember telling the N. L. R. B. that that weekend you received calls from some of the other employees, and

they told me that John had called them up and told them that the shop was slow, and that there was no more work for them? A. Yes, I do.

78 Q. And is that what the other employees told you? A. They had -- the other employees, I had contacted them or they had contacted me, and they had said that John had called them and said either to look for another job, there's no more work for you at Pollack, or they are being laid off or -- or they are being laid off from Pollack.

Q. Fine.

And that's what they told you on the telephone? A. This is what they told me on the telephone.

Q. In fact, that's what John told you when he called you also? A. John did not tell me that. John had told me -- he had asked me if I am interested in Local 3 or working with Pollack. He had stated that with Local 3 I will go nowheres, with Pollack I will remain and make money and learn the trade.

Q. Now, you continued to work for Pollack from November 30 to January the 1st or second week in January; is that right?

A. I believe that between the period of November 30 and January, I believe it was like the 11 of January, that I have worked for him. I believe that I might have been laid off once in between that period.

Q. But you worked basically continuously? A. I basically worked with him, with the possibility of once being laid off within that time period given.

79 Q. And did you work for Pollack Electric until the work was complete at Polymer? A. No.

Q. How much work was done? A. I would say about another possibly two weeks, depending -- well, from what I knew that was incomplete, I would say approximately a week. It might have been more work that I did not know of.

Q. That was fixtures and -- A. This was fixtures, completion of a room that the carpenters there had built. It was completion of other fixtures, and switches and outlets for motors.

Q. And that was about what was left at Polymer? A. This is that I knew of. There could have been more that I didn't know of.

Q. Did you know of any other work that Mr. Pollack was doing at that time? A. Other jobs other than Polymer?

Q. Yes. A. Well, there was a job in Attitudes of Woods.

Q. What kind of job was that? A. What kind of place or --

Q. Was it a small job, a large job? A. It was a large job, I would say.

Q. Was that a job that could be done by one or two people?

80 A. No.

Q. How much would you say the job was, if you know?

A. Value wise?

Q. As far as value, if you have any experience? A. I don't have that much experience that I can judge that.

Q. Why don't you tell me what had to be done? A. There were several motors we had to wire up on roof. There were fixtures that had to be rearranged. There were a cabinet that had to be changed. There were switches on the cabinet that had to be rearranged. There was an explosion proof area that had to be set up. And this is what I knew of.

Q. This is what you would call a big job? A. There might have been more involved.

Q. That was big as far as you were concerned? A. At that time?

Q. Yes. A. Yes.

Q. This is the only job that you knew of other than the Polymer job that you were working on? A. Can I think a minute?

Q. That was the only job you knew of other than the Polymer?

A. Can I think a minute?

81 Q. Sure. I'm sorry. A. To the best of my knowledge at this moment.

* * * *

82 Q. It's a fact John was doing the same work as Rescigno was doing, to your knowledge? A. It was only because I --

Q. Only to your knowledge. A. What was the question again?

83 Q. John was doing the same work as Rescigno, to your knowledge? A. No.

Q. All right.

You say that when you worked on the job with John he ran the job; is that right? A. When I worked on the job with John?

Q. Yes. A. He ran the job?

* * * *

84 REDIRECT EXAMINATION

Q. (By Ms. Kinney) On that weekend when you spoke with the other employees, with respect to your phone call from John, do you remember which employees you spoke to? A. I believe I spoke to all of them.

85 Q. Was the work that John did different in any way from the work that Al did, to the best of your knowledge? A. What do you mean by different?

Q. Did John do the same thing every day as Al did?

MR. TURCHIN: Objection.

JUDGE CHRISTENSEN: Overruled.

You may answer the question.

A. Well, I've only worked with John once or twice, to say that when I did work with him, I would work with him and he would be doing the same thing as I would be working under another mechanic.

Q. Did you ever hear John give any instructions to any of the mechanics? A. Yes.

Q. Would you relate the kinds of instructions John -- you heard John give to the mechanics? A. John would tell the men where they were working today, what they would be doing that day, who will be with who, who will go where, and sort of information like this.

* * * *

86 Q. (By Judge Christensen) You stated that at the time of your layoff or immediately prior to that time you were working with Al Rescigno? A. Yes.

87 Q. And there was a third man working? A. Yes.

Q. You didn't know his name; is that correct? A. At that time I had met him, I had known his name, but I only met him for two or three days ~ week the most and I forgot his name by now.

Q. But he was not Eugene Moretti, Gus Moustogiannis, George Handrinos, Thomas Nastos or Albert Rescigno? A. No.

Q. And he was not working there on November 30 and December 7th; to your knowledge? A. To my knowledge, I have -- I remember very badly dates. I can only say where he worked with me, and approximately that he worked the week that I was laid off because he was laid off too. I had drove him home.

Q. And he had not worked the previous time when these other men whose names I just gave you were laid off on December 7th?

A. No.

* * * *

CROSS EXAMINATION

Q. (By Mr. Turchin) Mr. Handrinos, was Mr. Krellenstein, was Steve with you on that evening, Friday, that you testified to on

November 30th? A. The Friday, November 30th, we was in the shop because it was payday and when we finished our job everybody come back in the shop.

89 Q. So that Mr. Krellenstein was with you? A. Steve was with me, Al was with me, Gus was with me, Tom was with me, and Gene was with me.

Q. You were all together that evening, and what took place that evening took place together with all of you? A. Can you --

Q. You say that you came back to the shop and all the people with you, Steve was with you. A. You say if he was with me, work with me?

Q. No. Work with you in the shop that evening? A. Yes.

Q. You were all together that evening? A. Yes.

Q. And everything that happened that evening happened with all of you together? A. Yes.

Q. And you're clear about that? That you're sure about?

A. Yes.

Q. Now, the next day, did you speak to Steve on the telephone? A. The next day?

Q. Yes. On Saturday? A. That Saturday, I don't remember. I remember --

Q. Do you remember saying you spoke to all the men, that they all called? A. Yes. I say that before.

90 I spoke to everyone, but I don't remember exactly what I say to each one. I remember we talk, each one.

Q. But you don't remember exactly? A. I don't remember exactly.

Q. Now, on the Monday after you were told by John that you might be laid off, you went to the union? A. Monday after, I was to the union, yes.

Q. And did you speak to the people at the union? A. Yes.
I tell them what's happened to us on Friday.

Q. And did you also tell them what happened on Saturday?
A. That's why we was in the union because he laid us off Saturday night.

Q. That's the reason you all went to the union? A. Yes.
To tell them what's happened, and we don't have any more work.

* * * *

92 MS. KINNEY: Thomas Nastos.

JUDGE CHRISTENSEN: Hold up your right hand, please.
Whereupon,

THOMAS NASTOS

was called as a witness, first being duly sworn, was examined and testified as follows:

JUDGE CHRISTENSEN: Be seated.
93 Give the reporter your name and address?
THE WITNESS: Thomas Nastos, 2303 38th Street, Astoria, New York.

DIRECT EXAMINATION

Q. (By Ms. Kinney) Did you formerly work at Pollack Electric?
A. Yes.

I start work at Pollack Electric in the middle of February '73.

Q. Who hired you to work at Pollack Electric? A. John Amorgianos.

MR. TURCHIN: I ask that it be stricken and objection to the question.

JUDGE CHRISTENSEN: Sustained.

Q. How did you get your job at Pollack Electric? A. I find job from an employment agency.

Q. What did you do after that, after you talked to the agency?

A. They give me a letter and I go in the shop. I stay out of the shop until the time to, somebody come in and open the shop. It was John Amorgianos and George Handrinos. And go inside, talk to -- ask for Mr. John Amorgianos and I talk to him, and he say to me, you have to take the job for 250 per hour. And you have to work the job. You have to run cables and explain to me what I have to do.

94 Q. What was your position? A. Mechanic, electrician.

Q. What were you paid when you first started? A. 250.

MR. TURCHIN: Objection.

I'll withdraw the objection.

Q. Did you receive any raises while you worked at Pollack Electric? A. Yes. I think -- yes, it was April.

Q. How much was your raise? A. He give me three dollars.

Q. Who did you speak to about the raise? A. John -- I speak to John.

Q. What did he say to you? A. Don't say nothing, and next week I take a raise.

Q. How were you paid when you worked at Pollack Electric? A. Excuse me?

Q. How were you paid when you worked at Pollack? A. The first time start to pay me by cash, and after April he pay me by check and also give me cash.

Q. Do you remember how much he gave you by check and how much he gave you by cash?

MR. TURCHIN: Objection.

JUDGE CHRISTENSEN: Ground.

95 MR. TURCHIN: On the ground it's irrelevant and immaterial.

JUDGE CHRISTENSEN: What is the relevance of the fact that he was paid by check and by cash?

MS. KINNEY: Well, Your Honor, there is an issue with respect to the majority status and with respect to the number of many employees on the payroll at any given time.

MR. TURCHIN: We never raised that issue. That's never been the issue.

JUDGE CHRISTENSEN: How does the way he was paid affect the issue of the number of employees on the payroll?

MS. KINNEY: Some of the employees were not on the payroll until after they were paid in check.

JUDGE CHRISTENSEN: Is there any question of the composition of the unit?

MR. TURCHIN: Not that I know of.

MS. KINNEY: I'll proceed then.

MR. TURCHIN: It's not part of the complaint.

MS. KINNEY: I'll withdraw the question then.

JUDGE CHRISTENSEN: The question is withdrawn.

Proceed.

Q. (By Ms. Kinney) Who was your boss?

MR. TURCHIN: Objection.

JUDGE CHRISTENSEN: Sustained.

It calls for a conclusion by the witness.

96 Q. Who gave you your work assignments? A. Mr. Pollack and Mr. John.

Q. When you work at Pollack who were the other employees?

A. I, the time to start was Al and George Handrinos, and after come in Gus Moustogiannis and after come in some Italian guy, his name was Nick. After, I think Gene, and Steve. And also was Salah.

Q. Did there come a time when the employees of -- let me start it over.

Did there come a time when there was a union organizing drive among the employees at Pollack Electric? A. Yes.

Q. Would you tell us about that, please? A. In the first -- was -- the first Gene talked first time about the union. And go over there and sign cards. And after, it was long time -- I was with John, and I go to gasoline station to put gas, in his car. Two guys come near to us and start to -- spoke with John about the union.

John say I don't have any idea about the union, I don't like union. And they ask me what about me. And I say I have to think. And they give me a couple of cards. I think they ask me how many guys working in the shop. And I say six.

97 And they give me, I think, six cards. The time to -- the guys leaving, and John drive me on the job. It was in Polymer, I think.

And the time to go over there, I spoke all the guys who was over there, Gene, Gus, and George. Also I spoke all the guys, and I say about the cards.

Q. What did you say to them? A. They give me -- two guys give me this cards, and about the union. But before the time to take -- drive me, John, the job, I have conversation with -- I have conversation with John, and he say Pollack don't like union, the union not is good because the price is high and he can't pay the mechanics with union prices.

And if anybody sign on the union, no more job in Pollack Electric. And I say that in the other people, and also -- and -- anything say before to me --

Q. Was John there when you talked to the other workers?
A. Yes.

He talked to the other workers too, don't have a job for anybody if sign on the union. And I throw the cards in the garbage to make something mix up.

* * * *

99 Q. Did you ever discuss the union with John or Mr. Pollack?

MR. TURCHIN: Objection.

JUDGE CHRISTENSEN: Overruled.

You may answer.

THE WITNESS: Except the time to -- I have the conversation with John, in the car, and the afternoon, November 30, to Mr. Pollack call in the back office, John, and --

JUDGE CHRISTENSEN: The answer is yes, you had another conversation about it, right?

THE WITNESS: Yes.

JUDGE CHRISTENSEN: That's the question.

100 Q. (By Ms. Kinney) Then tell us about it, please?

JUDGE CHRISTENSEN: Now you can tell us.

Q. Go ahead, tell us about it? A. And John -- Mr. Pollack call John in the back in the office and he has one paper, and I look in the paper, and I saw couple of names on the paper. I saw -- I don't see well what's paper is, but on the top of it -- under the papers and down on the papers I saw my name and George name, also Salah's last name, and John come in and ask everybody if anybody sign for the union.

Nobody say nothing. And John spoke to me in Greek, in my language, and ask me if -- to say truth, if I am man, to say truth, don't scare nothing. And I say to him, yes, I sign after that.

Also near to me stay Gus and I hear him -- he answers yes too. After that nobody say that except John go back to Mr. Pollack and say to him --

MR. TURCHIN: Objection, as to what Mr. John said to Mr. Pollack.

A. I hear that.

JUDGE CHRISTENSEN: Overruled.

You may answer.

THE WITNESS: I hear Mr. -- John say to Ralph, Tom and Gus sign. After Ralph give me my pay, and go home. Nobody say 101 nothing. Next day, it was Saturday, John call me in my house and say to me, I say to you before, if anybody sign on the union, no job for Pollack Electric.

And I said, all right, I feel better with the union because I sign, good luck. After that, I call anybody, and make appointment for Monday in the union office --

JUDGE CHRISTENSEN: You called the union office?

THE WITNESS: No.

Monday afternoon, make appointment for -- to go everybody over there. And I go over there, and I spoke with the union men, and with the other people, with Al, Steve, Gene, Gus, and George.

After that go everybody to take -- to pick up tools from the shop. Wait outside until John comes in and open, and start to pick up the tools. He go back, he dial a number and he come in to us and say wait, Mr. Ralph come in a few minutes.

He come in after a few minutes and say what we're doing. And we say to him --

Q. (By Judge Christensen) Who said -- do you remember who said? A. I say exactly that. I say John call me and also call the other employees and say no more job because signing on the union. Also Gene and Al say that, I hear. And he say, no, no, no, I am the 102 boss, and I don't say fired about the union, but slow, I'm slow, and couple of weeks off.

And I start to talk special now with him, and I say to him sign the union because feel better, better benefits, and more pay, and everything more happy because he ask me who don't say him before anything.

And he say if, say to me to everybody in the union, I make something more quickly. And after that make bigger conversation about the union and the benefits personally to me and own time -- he say to me you have big mouth now, the time to come here, you can speak nothing English, but now you have big mouth.

I say to him the time to come here you don't give me favor to take me in the shop, I work for you, and you keep me. This time he asked my why don't -- he asked me why John Amorgianos don't like the union, and Gene, I said to him, and say because John looking to take your business after you retire.

This time John come to me and gee, and like to punch me, and he say to me, you put knife in my back.

MR. TURCHIN: I object to the characeterization --

JUDGE CHRISTENSEN: I'm going to let the answer stand.

A. After that, George pull me out, and way outside in my car, to come in the other people, the other boys too. And went to union office in Flushing.

103 Q. (By Ms. Kinney) Did you go back to work at Pollack?

A. Mr. Pollack call me Tuesday night and say to go back to work and work for one day only, at Polymer.

Q. What did you do at Polymer that day? A. I make disconnect, the main power, and I make temporary service for the factory and start to make a new service, but not finished.

MS. KINNEY: Could we go off the record for a moment?

JUDGE CHRISTENSEN: Off the record.

(Discussion off the record.)

JUDGE CHRISTENSEN: On the record.

Q. At Polymer that day did you finish the job that you were working on? A. No.

Q. To your knowledge, what was left to be done? A. For mechanic and helper.

Q. What kinds of work did you have to do?

MR. TURCHIN: I think that the witness didn't finish the answer.

She asked what was left --

A. For one mechanic and helper more than one week.

Q. What would they have to do in that week?

MR. TURCHIN: Objection.

I think that we've exhausted that area.

JUDGE CHRISTENSEN: I'll let the witness answer.

104 MR. TURCHIN: Okay.

THE WITNESS: Can I answer?

JUDGE CHRISTENSEN: You can develop in cross whether it would take one week to do it so we need to find out what it was.

You may answer, what work was it that you thought would take a week?

THE WITNESS: From Con Edison, the main power, come in the factory, and it was the main switch, and over there give power to the other factory, the other parts of the factory.

Q. What work did you have to do? A. I have to put all the main switches.

Q. What were your hours when you worked at Pollack?

A. Eight hours per week, and I work six days a week.

MS. KINNEY: I have no further questions.

CROSS EXAMINATION

* * * *

109 Q. (By Mr. Turchin) Now, when you came to work for Pollack Electric, and you spoke to John, was Mr. Pollack in the Office? A. No.

Q. Or don't you remember? A. No, I remember was John and George Jandrinos.

110 Q. (By Turchin) When did you first see Mr. Pollack?

A. Next day.

Q. After you spoke to John, what did you do that day?

A. I leaving, I go home.

114 Q. And when John worked with you on the job, did he tell you what to do? A. Yes, sometimes.

Q. In other words, he did the same thing you did with the 115 helper? A. No.

Sometimes John stays and looking the job, don't make nothing.

Q. Now, did there come a time when your salary was raised from three dollars to \$3.75 an hour? A. Excuse me?

Q. You started at 250, is that right? A. Yes, sir.

Q. Then your salary went up to three dollars? A. Three dollars April.

Q. And when did it go up to 375? A. About September.

Q. And when it went up to 375, was that when you started to run the jobs? A. I don't understand.

MS. KINNEY: Objection to the characterization.

JUDGE CHRISTENSEN: Sustained.

Q. When your salary became 375, did you do anything differently than you did before? A. No.

121

RECROSS EXAMINATION

122

JUDGE CHRISTENSEN: During the time that you were working at Pollack Electric, did you ever during a work day want to take an hour off or something like that during the day?

THE WITNESS: If I need to take a day off or hour off --

Q. (By Judge Christensen) Did that ever happen? A. I ask John or Mr. Pollack.

Q. I see.

And it did happen? A. Sometime. Sometime, they say yes, sometime they say no.

Q. But there were times when you asked for time off while you were working at Pollack? A. Yes.

Q. And you asked either John or Mr. Pollack? A. Yes.

Q. Now, when you asked John, did he grant your request or deny it right then and there or did he first check with Mr. Pollack and then come back and tell you? A. Just at the time I asked.

Q. Now, when you went out on jobs, did John ever take you on those jobs? A. I can't understand.

Q. When you went to a job to go to work, did John ever take you there -- A. Sometime John, sometime Mr. Pollack.

123 Q. When John went with you to those jobs, did he tell you how he wanted the job done? A. Sometime he help me to -- from where I have to run the cables. Sometimes say only what I have to do, I have to do exactly one receptacle and one there and one air condition line on the top floor.

Q. And he would tell you what the work was you were to do? A. Yes.

Q. Other times Mr. Pollack would tell you that? A. Yes, sir.

Q. Were there ever any times when you didn't do the work right and someone inspected it or John or Mr. Pollack, and told you it wasn't right? A. Yes.

Q. Did anyone other than John or Mr. Pollack ever tell you that? A. I can't understand what you mean.

Q. There were times when you didn't do the work right; is that correct? A. Right.

Q. Who told you it was not done right? A. Sometime John saw that, he make me correct. Sometimes Ralph.

Q. Anybody else? A. No.

124 Q. You said you were raised to three dollars and then you were later raised to 375; is that correct? A. Many months after.

Q. Did you ask for either of those raises or were they just given to you without your asking? A. I ask about them for raise.

Q. Who did you ask? A. First time I ask John. And second time I ask John, and after I ask Mr. Pollack.

Q. Who told you you had the raises or did anyone tell you you had the raise? A. John -- the first time I ask the time to take three dollars raise, John say all right, you have the raise. And the second time I ask in June about the raise --

Q. Who did you ask? A. I ask John about the raise, and he say to me I have to speak to Mr. Ralph. And after two, three weeks I ask him again. He say you have to wait, next week ask him again and he say to me you go ask Mr. Ralph.

Q. Then did you ask Mr. Ralph? A. I ask Mr. Ralph, and he say to me I forgot about -- John say about that but I forgot. I give you your raise in June.

* * * * *

125 Q. (By Mr. Turchin) When was the first time you spoke to John about taking time off? A. I remember -- it was in the car wash, and I feel sick, and I call in the office, and I say I'm sick. And John come down and say to me go home.

Q. But you called in the office first to tell them you were sick? A. Yes. I called in the office.

Q. Did you speak to Mr. Pollack? A. No.

Q. But you don't know -- A. I speak with the girl. I speak with answer.

Q. So that John came down after you called in the office?

A. The time to come in the job was so short to think John coming because I was the time -- I was ready to leave from the job.

* * * *

126 Q. Now, did you ever work with Al Rescigno on a job?

A. Many times.

Q. And did you take orders from Mr. Rescigno? A. No.

Q. Who did you take orders from on the job?

Who ran the job?

MS. KINNEY: Objection.

A. John or Mr. Pollack.

Q. Didn't Al Rescigno run the job? A. No.

Al working like me, mechanic.

Q. Didn't Al tell you -- A. Lot of different jobs.

Q. Did Al tell you what to do? A. No.

If we working with Al together, we have different helper, and I make different job and Al make different job in the same place.

Q. In other words, you would work by yourself and Al would work by himself? A. Yes.

127 Q. So you never worked together with Al? A. Work together but spoke --

Q. You had a certain job and Al had a certain job? A. Exactly.

Q. Did you ever work where Al was your boss? A. No, never.

Q. Did you work with John on the job? A. Yes, sometime.

Q. Who was your boss then? A. John.

Q. In other words, you took orders from John? A. Yes, sir.

Q. I see.

Did you have a helper? A. Yes. Use helper too.

Q. Did you ever work with John alone? A. I can't remember. Sometimes. Maybe.

Q. When you worked with John alone, were you working as his helper? A. Not like a helper. He give me the order to working. I working mechanic.

Q. Did you ever work with Al alone? A. Maybe sometimes. But working mechanic, not helper.

Q. You worked with Al alone; is that right? A. Maybe sometime.

Q. And was that the same way you worked with John?

128 A. No.

Q. What was the difference? A. Because John anytime it was like supervisor. I work with John like Mr. Ralph.

* * * *

129 MS. KINNEY: Albert Rescigno.

JUDGE CHRISTENSEN: Hold up your right hand, please.

Whereupon,

ALBERT RESCIGNO

was called as a witness, first being duly sworn, was examined and testified as follows:

JUDGE CHRISTENSEN: Be seated.

Give the reporter your name and home address.

THE WITNESS: My name is Albert Rescigno. I live at 1347, 40th Street, Brooklyn, New York.

DIRECT EXAMINATION

130 Q. (By Ms. Kinney) Did you formerly work at Pollack Electric? A. Yes, I did.

Q. When did you start working for Pollack Electric? A. June 1971.

Q. What was your position? A. I was a helper when I started.

Q. Do you recall what you were paid when you started? A. Two dollars an hour.

Q. Did you ever get any pay raises? A. Yes.

I got pay raises. Approximately every six months. After a while it wasn't every six months, it was a little longer, but I got pay raises regularly.

Q. Did your position ever change? A. Eventually as my experiences grew up I became a mechanic, you know.

Q. How were you paid? A. Check and cash.

Q. Who gave you your work assignments? A. When I first started working only Ralph. And then when John came, John.

Q. When you worked at Pollack who were the other employees?

A. When I first started working there it was Carl Coltenmeyer, and he was the only other employee there, and approximately five or six months later John came, and he was working there, and then there are a number of them. You want me to tell you everyone of them?

Q. Yes, if you remember. A. After John there was Tony, Jimmy, I don't remember last names.

MR. TURCHIN: I think that the question was after Bob Coltenmeyer there was John. I believe that's the answer --

JUDGE CHRISTENSEN: Since then there's been Jimmy and somebody else, Tony and Jimmy, I gather.

Q. (By Ms. Kinney) Turning to September of '73, if you recall, who were the other employees at Pollack Electric? A. It was

myself, George Handrinos, Gus, Thomas Nastos, Eugene Moretti and Steve, and Salah was there, right.

Q. Did you ever go to work late at Pollack Electric?

A. Excuse me.

Q. Did you ever report to work late at Pollack Electric?

A. Yes.

Q. What time were you supposed to come to work? A. We were supposed to be there quarter to eight, to load the truck, load the cars and we left -- supposed to leave on the job by 8 o'clock.

Q. When were you late?

132 What happened? A. Well, if you were late, a few minutes late, John would normally send you home.

Q. Did that happen to you? A. Yes.

It happened to me a few times.

Q. Did there come a time when there was a union organizing campaign among the employees of Pollack Electric? A. Yes, there was a time.

Q. Would you tell us about that? A. When it first started I was not there. I had quit for about a month over a dispute I had with John, and I came back and when I came back the union was already organizing, they were, you know, people were organizing.

Q. How did you know that? A. When you went back, I went to the car wash, where Gus told me about it, that they had organized, they're going for the union. And I didn't say anything until I saw Eugene Moretti and Eugene told me about it.

When Eugene told me about it I thought it over, and I thought that was the best thing to do, and I went to Neck Road to fill out a pledge card.

Q. Do you remember when that was approximately?

A. Early October. I don't know the exact date.

Q. Did you fill out a card? A. Yes, I did.

133 And also I had gone to the main office with Gene and George and Gus and Tommy, and filled out more pledge cards at the main office on Jewel Avenue.

Q. Did you ever talk -- did Mr. Pollack ever ask you anything about the union? A. No.

He never asked me anything about the union. But one Saturday I received a phone call from George saying that we were laid off -- I was laid off, he told me I was laid off because of lack of work. I got in touch with Tommy and George and Gus and Gene and Steve, you know, I called, and they called me, and they had told me that --

MR. TURCHIN: Objection as to what was told to the witness.

JUDGE CHRISTENSEN: Well, I'll accept it for what he was told by the employees, but not for any attribution to any management represent --

MR. TURCHIN: I assume of course that would be true of any conversation -- I have made my objections, I want the record clear, you have indicated again you will allow the testimony but you will take it in the same manner you are taking this testimony.

JUDGE CHRISTENSEN: Yes.

MR. TURCHIN: Thank you very much.

JUDGE CHRISTENSEN: You may answer.

A. I was told that some people got laid off because of lack of work.

134 And some people got fired because of union activities.

Q. What happened after that? A. After that we all agreed to meet at the union hall on Gravesend Neck Road that Monday, next Monday, and we explained the situation to the people at Neck Road, and they told us not to worry about it, to tile for our unemployment insurance, and then we asked them if we could pick up our tools.

And they said yes, it would be a good idea to pick up our tools. And we went that Monday afternoon to pick up our tools.

Now, when we got there nobody was there yet. And John came and opened the door and let us in. While we were in there John said to wait for Ralph Pollack, that he would be there in a few minutes. And we waited. And he came in in a few minutes.

And when he came in, he sat down at his desk, and he asked who had been the -- he asked who was the spokesman, who's the spokesman for the clan or the gang or something like that.

In which Gene Moretti said to Ralph Pollack, what do you want to know? And Ralph asked, well, who had gone to the union. And nobody spoke up, nobody said anything. And then John talked in Greek

135 to Tommy, Gus and George, and I don't know what was said, but John turned around and said to Mr. Pollack, Gus and Tommy.

After that there was a lot of things said. One of the things said, Mr. Pollack said was why we didn't go to him before we went to the union, that he would -- he would have tried to get us into a different union.

Q. Do you remember any more of what was said? A. Yes.

It came up, a shouting match between Gene and John about, something to the effect that John wanted to take over Ralph's business after Ralph retired. How it got to that point in the conversation I don't know. But I remember those words, and John lost his temper a little bit, and everybody started to walk out, and everybody had had enough and started to walk out, except for me and Steve.

Me and Steve remained behind. I went back to give Mr. Pollack the keys back, because I had keys to the shop. And Mr. Pollack asked us about the union, at which time we didn't say anything. And he had told us to stay in touch with him, that he wanted to talk to us, me and Steve were together.

And the next night, which was a Tuesday, I called Mr. Pollack and he asked me a few questions. One of the questions was did I tell him how much I made. And I told him I hadn't gone down to the union hall. And he asked me who went with me.

I repeated I didn't go. And he asked me a few questions in that manner -- of that manner. So finally he said Okay, he said you can come in to work the next day, which was Wednesday.

Now, I went in to work that Wednesday. I don't believe Steve came in until Friday. And Steve told me that a similar situation happened with him with the phone call --

MR. TURCHIN: Objection as to what was said between Steve and --

JUDGE CHRISTENSEN: I will only accept it for what Steve said. I will not attribute it as having been stated by a representative of management.

Q. (By Ms. Kinney) So you went back to work at Pollack Electric? A. Right.

Q. And then what happened after that? A. Well, we worked straight up until January 11. But January 5th we went to Gravesend Neck Road, Eugene Moretti and myself.

MR. TURCHIN: Objection as to any conversations with the union. The answer was not responsive.

JUDGE CHRISTENSEN: I forgot the question.

What was the question?

MS. KINNEY: Probably what happened after that.

137

MR. TURCHIN: That's right.

Q. (By Ms. Kinney) Who did you talk to at the union?

MR. TURCHIN: Objection.

JUDGE CHRISTENSEN: What's the relevance of what conversation he had with the union?

MS. KINNEY: The union told him at that time what was happening with respect to the petition.

JUDGE CHRISTENSEN: Well, for that limited purpose to show notice of what was happening, I suppose, to the employee.

You may answer it for whatever it's worth.

A. At that time, this was January 5th, he told Eugene Moretti and myself that January 8 they were going to talk to Ralph's lawyer, Mr. Turchin, and that if they couldn't set a date for a vote, that January 11 they were going to go to Court to set a date for a vote.

Q. Do you remember who you talked to at the union?

MR. TURCHIN: Objection.

JUDGE CHRISTENSEN: Overruled.

You may answer.

A. Sal. I can't think of his last name. Sal. At the union hall.

Q. Now, you said, I think, that January 11 was your last day
138 of Pollack Electric? A. Right.

Q. Did anybody say anything on that day? A. Well, that day we came back from Polymer, which is a job we were doing, and there was three of us there at the time. There was Steve, myself, and some new kid who was there. And Mr. Pollack said he would have to lay us off because of lack of work.

Q. Had you ever been laid off before when you worked at Pollack Electric? A. No, never.

Q. What were your hours at Pollack Electric? A. From a quarter to eight to 4:30.

Q. How many days a week? A. Six days. Normally five, but a lot of weeks we work six days.

Q. What were you working on at Polymer on January 11, if you recall?

MR. TURCHIN: Again, I would object. I don't know what the purpose of going into this same issue which --

JUDGE CHRISTENSEN: As preliminary to a question as to how much work there still was left to do.

The objection is overruled.

A. Well, we were in the middle of doing a service which Tommy had started. We put up lights, rearranged lights. We made experimental

139 benches, you know, where they mix chemicals and stuff, outlets and lights and things like that. We put lights up in a separate room.

Q. Did you finish the job? A. No.

Q. To your knowledge, how much work was left to be done at the job? A. Approximately a week. From what I know of the job, approximately a week.

CROSS EXAMINATION

Q. (By Mr. Turchin) Now, when you came to work for Pollack Electric, you came to work as a helper; is that right?

A. Yes.

Q. Now, when John came to work, John came to work as a
mechanic? A. Yes and no, and I'll explain that.

140 John did a few jobs for Ralph before I worked there. I notice from the other employee who worked with me, Carl Coltenmeyer, as a mechanic. But when John came back, John had opened his own business by himself.

Now, when Ralph took a vacation to Florida --

MR. TURCHIN: I'll object to the answer. I just wanted -- I understand what the witness is saying but I think that it's not responsive, and I ask that I be allowed to go on to the next question?

JUDGE CHRISTENSEN: Well, it's always permissible for the witness to answer either yes or no, and he answered yes or no, and then explained his answer. And I think he's --

MR. TURCHIN: I just asked him a simple question, whether or not John was working as a mechanic.

JUDGE CHRISTENSEN: When he came out --

MR. TURCHIN: And the answer was --

JUDGE CHRISTENSEN: Yes and no, and I'll explain my answer. He's explaining his answer.

I will let him continue.

MR. TURCHIN: Under the circumstances I believe he is not answering the question so I'll withdraw the question and ask another question.

JUDGE CHRISTENSEN: All right.

Q. (By Mr. Turchin) Now, you knew that John worked for
141 Pollack before you worked for Pollack? A. Not worked for
him in the sense that Ralph paid him a salary. He had done jobs for
Pollack.

Q. But you didn't know what John did with Pollack before you
came to work for him? A. No, I didn't.

Q. And the work John was doing was that of a mechanic?
If you can answer, answer yes or no.

MS. KINNEY: Excuse me, what point in time are we talking
about?

Q. At the time that John came back to work for Pollack.
A. When John came back to work for Mr. Pollack, Mr. Pollack
went on vacation. John took over the shop as foreman boss.

Q. That's when Mr. Pollack went on vacation? A. That's
the first time I worked with John.

Q. That's when you first worked with John? A. Right.

Q. That's when Mr. Pollack went on vacation? A. Right.

Q. At that time Mr. Pollack -- John was working as the
mechanic? A. No.

John was working as a foreman boss, took over the shop when
Mr. Pollack went to Florida.

142 Q. The job he was doing was that of a mechanic? A. No.

* * * * *

Q. Now, let's see if I can refresh your recollection about the
Park Avenue job.

Didn't you run that job? A. I was the mechanic on that job. I took orders everyday by phone, and which time Mr. Pollack would come up once a week to inspect and see what was done.

143 Q. Who gave you the orders? A. Mr. Pollack and John.

Q. Didn't there come a time when John wasn't at Pollack?

A. Not when I worked at -- yes, John had gone on a vacation or something.

Q. You don't know where John went? A. I believe he went back to Greece.

Q. That's right. He went back to Greece, and -- A. Right.

Q. -- do you remember whether or not he had told you that he was going to Greece and would probably stay in Greece?

MS. KINNEY: Objection, Your Honor.

I don't understand the relevance of John's conversation about Greece has to do with this proceeding.

JUDGE CHRISTENSEN: I'll let the witness answer.

A. John said he was goin , to Greece. But he did not say anything about staying there.

Q. Well, when John was gone, didn't you run the jobs fully?

A. Not completely, no. I ran the job as far as I took orders from Mr. Pollack and I relayed the orders to Gus who worked with me. And I did the work myself, me and Gus.

Q. Wasn't anyone else in the Park Avenue job with you?

A. Occasionally George would come and Tommy, Gus, one or two times another person, Nick would come, yes.

144 Q. And wouldn't you run the job and tell them what to do?

A. No. No.

Q. Who would tell them what to do, to your knowledge?

A. I'll explain that to you.

Me and Gus had a certain job to do at a penthouse apartment. Tommy and George would come for reason of taking care of the

apartment building proper. That was 29 floors below the penthouse. So the job that Tommy and George did was completely different from the job Gus and myself did most of the time.

The only time I worked with George and Tommy was when the apartment building started to fall behind, when it wasn't being produced fast enough, then we went down and gave him a hand. As far as running the job, I never ran that job.

The penthouse, me and Gus did ourselves, and we got our orders from Mr. Pollack just about everyday of what had to be done.

Q. Didn't Mr. Pollack ask you what was happening on both jobs? A. No, he didn't, because most of the time when George and Tommy went there it was only one day.

Q. Didn't he call you everyday and ask you what was happening in the building? A. He called me quite often and asked me.

Q. Didn't he ask you what was happening in the building? A. He says -- occasionally he did, yes.

Q. Didn't he ask you what was going on where the work was being performed by Gus and Tommy? A. No. Gus worked with me.

Q. Who were the other two people, I'm sorry. A. George and Tommy.

Q. Didn't he ask you about what was happening with their work? A. Occasionally he would ask me.

Q. And you would tell him? A. No. If I knew I would tell him and if I didn't know I'd tell him I didn't know.

Q. Didn't he ask you to check? A. No. He wanted to know what I had done, what Gus had done, but he never asked me, for instance, what is George and Tommy doing, it wasn't my job to know what they were doing.

Q. Didn't he ask you how far they had advanced on that job? A. No.

Because they made reports in themselves.

146

Q. Did he ask you why he was asking you since they were making reports in themselves? A. No.

I never asked him.

Q. Now, during 1973 were the -- was the business fairly busy -- Pollack Electric?

MS. KINNEY: Objection, Your Honor.

I don't understand what this question is leading into?

JUDGE CHRISTENSEN: Well, counsel has an economic defense. '73 was an extraordinary year. He's asking if they were busy that year to bulster his defense.

MS. KINNEY: I'll withdraw the objection.

JUDGE CHRISTENSEN: Answer.

A. It was a fairly busy year.

Q. More busier than the other years? A. Yes.

Much more busier than the other years.

Q. This was an exceptional year for Pollack? A. Not exceptional.

*

*

*

*

*

147

JUDGE CHRISTENSEN: On the record.

MS. KINNEY: Off the record the parties discussed a stipulation which is as follows:

148

If General Counsel called Gus Moustogiannis to testify he would testify substantially in accordance with all of the testimony of George Handrinos, and that if General Counsel called Eugene Moretti to testify, he would substantially testify in accordance with all of the testimony of Steven Krellaenstein concerning the events in the fall of 1973.

MR. TURCHIN: Of course the stipulation would include all testimony, including cross, redirect and recross.

JUDGE CHRISTENSEN: That is clear.

Is the stipulation acceptable to counsel for the Respondent?

MR. TURCHIN: Yes, it is.

JUDGE CHRISTENSEN: And counsel for the General Counsel?

MS. KINNEY: Yes.

JUDGE CHRISTENSEN: Now you want a second stipulation?

MS. KINNEY: The second stipulation relates to the authenticity of the cards signed by union designation -- designated cards signed by Eugene Moretti, Gus Moustogiannis, and Albert Rescigno.

They would be 2-D, E and F, and that they are authentic cards signed by the respective individuals.

JUDGE CHRISTENSEN: The stipulation that these cards were executed by the individual whose name appears thereon on or about the dates which appear on the cards --

149 MR. TURCHIN: I would so stipulate.

MS. KINNEY: I stipulate

JUDGE CHRISTENSEN: I will accept the stipulation and I will accept in evidence those three exhibits.

* * * *

153 REDIRECT EXAMINATION

Q. (By Ms. Kinney) Did Mr. Pollack ever reprimand you for being late? A. Not Mr. Pollack, John.

Q. How late were you when you were late? A. A few minutes late.

MR. TURCHIN: That's been answered.

JUDGE CHRISTENSEN: Let's pass on to the next question.

MS. KINNEY: No further questions.

MR. TURCHIN: No further questions.

JUDGE CHRISTENSEN: I have just a few, Mr. Rescignos.

Q. (By Judge Christensen) I presume from your testimony from time to time, a good part of the time you worked with a helper after you became a mechanic? A. Yes, most of the time.

Q. All right.

Now, with your helpers ever transferred from the job with which they were working for you or with you to another job?

A. Yes. Many times.

Q. Who transferred them? A. John or Ralph. Most of the time John.

154 Q. And, now, did you ever transfer your helper from working with you to another job? A. I did not drive up until a few months ago. I could not possibly do it.

Q. But that did happen, and when the helper was taken from you who was helping you to another job either John or Mr. Pollack told the man and told you that the helper is being moved to another job? A. Yes, sir.

Q. And you worked alone or they brought another helper over to you, is that what happened? A. Yes, sir.

JUDGE CHRISTENSEN: I have no other questions.

Q. (By Mr. Turchin) The reason that you never took a man to another job is you never drove? A. No.

I had no authority to do so.

Q. You didn't drive, is that not so? A. I didn't drive, but I didn't have authority either.

Q. You didn't drive. So you could not have taken a man over to another job? A. I did not have the authority to do so. I didn't drive and I did not have the authority to do so.

JUDGE CHRISTENSEN: It never happened?

155 You never did it?

THE WITNESS: Right.

156 MS. KINNEY: Sure.

Eugene Moretti.

JUDGE CHRISTENSEN: Hold up your right hand, please.

Whereupon,

EUGENE MORETTI

was called as a witness, first being duly sworn, was examined and testified as follows:

JUDGE CHRISTENSEN: Be seated.

And give the reporter your name and address.

THE WITNESS: My name is Eugene Moretti. I live at 1608 East 22nd Street, Brooklyn, New York.

DIRECT EXAMINATION

Q. (By Ms. Kinney) By stipulation it is agreed that you formerly worked at Pollack Electric? A. Yes.

Q. And that you no longer work at Pollack Electric?

A. Yes.

Q. After your last day at Pollack Electric, did you ever have occasion to go back to Polymer? A. Yes, I have. Yes, I did. I went back with Al Rescigno. We took my car. We were

157 asked to see if there were any other people working on the job, on any jobs. And we parked from the corner of the shop in the morning, early in the morning -- the day I don't remember -- and we looked at the shop, nobody was there.

And then we drove to one of the job sites we were on previous.

Q. We're talking about Polymer now? A. Yes. Polymer.

And we went in -- we drove in through the back and I get out of my car and I went inside the back entrance. And I had asked one

of the people there, I told them that I lost my wallet and I wanted to see if anybody had found it.

And when I went in, I found that the job that we had started to do a month and a half ago, two months --

JUDGE CHRISTENSEN: When you say we, who are you talking about?

THE WITNESS: Well, I was working on that job too at Polymer at one time.

JUDGE CHRISTENSEN: Who is the we?

THE WITNESS: Tommy, myself, George, and Gus, Al and Steve, that we had worked on that job and it wasn't completed.

Q. When was it that you went back? A. This was, I believe, in -- I don't recall. It's probably in January.

Q. What did you observe?

MR. TURCHIN: Objection.

JUDGE CHRISTENSEN: Overruled.

MR. TURCHIN: No foundation.

JUDGE CHRISTENSEN: January. He's in Polymer. What did he observe?

MR. TURCHIN: Why is that important?

JUDGE CHRISTENSEN: Well, I think part of your defense is that all jobs were completed at the time those men were laid off.

MR. TURCHIN: No.

My defense is not that they were completed. That the work had -- there was no further work and whatever work had to be done was limited and was completed, not that it was completed. It was never our position that the job was completed.

That the amount of work was not significant and as testified to by the witnesses it was a week or two that was left.

JUDGE CHRISTENSEN: Since we've had a great deal of testimony already on how much work was estimated was still to do on

the Polymer job at the time of the layoff of the last one of the
alleged discriminatees, I think we might as well continue to permit
159 the development of one more witness' testimony concerning
the volume of work still left as of that time.

Therefore, the objection is overruled, and the witness may
answer.

What did you observe?

THE WITNESS: I observed that the work that -- when I was
on the job, two months prior, it wasn't completed.

MS. KINNEY: No further questions.

MR. TURCHIN: I have no questions.

JUDGE CHRISTENSEN: The witness is excused.

(Witness excused.)

MS. KINNEY: I have about a --

MR. TURCHIN: Are you finished?

MS. KINNEY: I'd like about a five minute break.

JUDGE CHRISTENSEN: Can you make that three.
We're trying to break at 5:30.

MS. KINNEY: Okay.

JUDGE CHRISTENSEN: Off the record.

(Discussion off the record.)

JUDGE CHRISTENSEN: On the record.

MS. KINNEY: Your Honor, before closing I'd like to recall
George Handrinos.

It can be noon or in the morning.

JUDGE CHRISTENSEN: Well, one or two questions or --

MS. KINNEY: Yes.

160 JUDGE CHRISTENSEN: I'll defer to counsel.

If you're in a hurry to get out of --

MR. TURCHIN: Maybe if you will give me an offer of proof as
to what he will testify I'll stipulate.

MS. KINNEY: The offer of proof is that he doesn't remember whether Al was at the Friday, November 30, event or not.

MR. TURCHIN: I'll stipulate if he testify, he would so testify, not conceding of course, the truth of that statement, and the record will speak for itself.

JUDGE CHRISTENSEN: All right.

MS. KINNEY: Okay.

JUDGE CHRISTENSEN: I accept the offer of proof and the stipulation of counsel if the witness were called to testify, he would so testify.

MS. KINNEY: General Counsel rests.

JUDGE CHRISTENSEN: At this time then we shall recess until 10 o'clock tomorrow morning.

(Whereupon, the hearing was closed at 5:35 p. m.)

210

* * * * *
16 Court Street
Brooklyn, New York
January 29, 1975

211

MS. KINNEY: Off the record the parties agreed to the following stipulation:

The parties have agreed to amend the stipulation concerning the testimony of Gus Moustogiannis to provide that his conversation on Saturday evening, December 1st with John Amorgianos was the sum and substance of the conversation related by Thomas Nastos and the stipulations stands in all other respects.

MR. TURCHIN: I would so stipulate.

JUDGE CHRISTENSEN: The stipulation is received.

MR. TURCHIN: At this time, since the Petitioner's case is complete, I would move to dismiss on the grounds that there has been no proof that the Employer is engaged in interstate commerce.

There has been proof that the Employer is not engaged in interstate commerce pursuant to the applicable rules.

The proof has been that the Employer did business with clients whose total of commerce is no more than \$17,000 some odd, in addition to purchasing goods that could have originated out of the State in the sum of approximately \$3,600.

Clearly this Employer is not under the jurisdiction of the Board.

212 There has been a failure of proof with reference to 4A, B, G, and, of course, the denial and Paragraph 6.

On that basis I would move for you to dismiss the complaint herein.

JUDGE CHRISTENSEN: As I read the earlier pleadings in the various matters raised earlier in the course of the unfair labor practice indicating the Board's failure to exercise its jurisdiction based upon the full extent of its jurisdiction rather than its discretionary standards which it had adopted and for that reason directed that this hearing go forward.

Therefore, it would appear incumbent upon me since the directed the Regional Director to proceed on the basis of the Board's full reach of its legal jurisdiction rather than its discretionary one that the motion must be denied.

MR. TURCHIN: I would just indicate to you, sir, that the discretionary jurisdiction of the Board is predicated not on the statute, the wording of the statute clearly would not cover this particular procedure in that there has been no proof whatsoever that this Employer is in anyway engaged in interstate commerce.

It is a fact there has been no proof whatsoever other than the Employer has done some electrical work in the City of New York.

213 The Board's jurisdiction then would be limited to its statutory jurisdiction rather than to its discretionary jurisdiction and clearly,

under its statutory jurisdiction it is without jurisdiction over this Employer, so in the sense that you have indicated that the Board has elected not to use its discretionary jurisdiction, it then is relegated to its statutory jurisdiction.

If its statutory jurisdiction does not cover this Employer then, under those circumstances, the motion should be reconsidered and on the points that I have mentioned.

JUDGE CHRISTENSEN: I think I am bound by the Board's earlier ruling jurisdiction in this case.

Therefore, again I deny the motion.

MR. TURCHIN: I say if you are bound by the Board's earlier ruling then the pleadings herein were unnecessary.

The pleadings refer specifically to a state of facts, and the Board's ruling were predicated on those state of facts.

If those state of facts were not proven then you are not bound by the Board's rules.

In effect, and I use this only as an example, if in effect a man is brought up on charges of murder and a motion to dismiss with reference to those charges is denied, and the Court's hold that there is sufficient proof in the record to allow the indictment to go forward, that does not give the prosecutor any less of a burden.

214

That burden is still on the prosecutor to prove those facts.

The Board indicated in its rulings that there was certain facts upon which it relied and sent it back for the hearing.

Those facts have been pleaded and not proven. That is the point.

I am not arguing that you can reverse the Board's ruling. I am arguing that you are now required to examine the facts as proven at this hearing.

Absent proof, then the Board's ruling does not apply.

JUDGE CHRISTENSEN: Well, I stand by my ruling.

You may proceed.

MR. TURCIN: The Employer calls Ralph Pollack.
Whereupon,

RALPH POLLACK

called as a witness, having been first duly sworn in by Judge Christensen, was examined and testified as follows:

JUDGE CHRISTENSEN: Give the Reporter your name and address.

THE WITNESS: Ralph Pollack, 2332 East 18th Street, Brooklyn, New York.

DIRECT EXAMINATION

Q. (By Mr. Turchin) Mr. Pollack, what is your business?

A. I am an electrical contractor.

215 Q. How long have you been in the electrical business?

A. I have been in the electrical business 20 years.

Q. What is the name of your firm? A. Pollack Electric Company, Incorporated.

Q. Who owns that firm? A. I am the sole owner.

Q. Directing your attention to the year 1970 would you tell me the names of your employees during that year? A. Yes.

MS. KINNEY: Objection, your Honor.

I don't understand the relevance of this line of inquiry.

JUDGE CHRISTENSEN: Counsel explained earlier he has an economic defense, namely, 1973 was an extraordinary year and it was an unnatural peak of employment that year.

To foster that proof or advance proof of that contention he obviously has to go into prior years.

The objection is overruled.

A. In 1970 I had two employees, John Amorgianos and Carl Coltenmeyer.

Q. In 1971 would you tell me the names of your employees?

A. In 1971, up until August 27, I had Carl Coltenmyer, Al Rescigno and John Amorgianos.

216 Q. Did there come a time when Mr. Amorgianos left your employ? A. Yes.

Q. For how long a period was he out of your employ?

A. He left April the 23rd.

Q. Of what year? A. Of 1971.

Q. Would you tell me when he returned? A. Yes, he returned in August of 1972.

Q. In 1972 would you tell me the employees in your concern?

A. Yes, up -- from that time we still had Carl Coltenmeyer, Al Rescigno and John Amorgianos.

It stayed that way until the end of the year, until 1972.

Q. Will you tell me the amount of employees you had in 1973? A. Yes, from January 5th John Amorgianos was with me, Carl Coltenmeyer, Al Rescigno.

Up until the early part of March --

MS. KINNEY: Your Honor, I have an objection to the use of these books, because we have already had testimony with respect to payments off the books and I have no understanding as to the accuracy of these books and ledgers.

JUDGE CHRISTENSEN: You will have the opportunity to examine them.

217 MR. TURCHIN: I think what you prefer is that if a man was hired and was working for a day or two he would be paid cash, but as a man became a permanent employee he would be paid by check.

These are the employees who were permanently on the payroll who worked for an extended period of time.

In other words, these are the permanent employees that were referred to.

These are not the occasional men that would come in for a day.

JUDGE CHRISTENSEN: As I understand it, what the witness is doing is referring to his books of account showing his payrolls for the period he is talking about; is that correct?

THE WITNESS: Yes.

MR. TURCHIN: Yes.

JUDGE CHRISTENSEN: All right.

Therefore, counsel for the General Counsel shall have the opportunity to examine those books and records prior to cross examination.

MR. TURCHIN: Other than, of course, an occasional local situation where a man would come in for a day or two and he would let him go.

JUDGE CHRISTENSEN: She is entitled to bring that out in cross examination.

MR. TURCHIN: I don't want there to be any doubt.

218

JUDGE CHRISTENSEN: The objection is overruled.

Q. Would you tell me the employees, names of your employees in 1973? A. And then Mr. Moustogiannis came to work for me, Mr. Nastos, Mr. Handrinos. This is all during 1973, starting from March, April, May, June, until all the way through July.

Then in September of 1973 Mr. Moretti came to me and then Mr. Krellenstein came to me.

Q. Is that 1973? A. We are still in 1973, in November. November Mr. Krellenstein, in November.

Q. Now, referring to 1974, would you tell me how many employees you have had in 1974? A. Yes.

January of 1974 I had three employees up for the first two weeks in January and then from then on just Mr. Amorgianos.

Q. That would be one? A. One.

Q. During 1974 have you hired any permanent employees?

A. No permanent employees.

Q. Have you hired any mechanics at all? A. No mechanics at all.

Q. Would you tell me the volume of business that you had in 1973? A. In 1973 my corporation papers indicate approximately \$75,000 worth of business.

219 Q. What was your total business in 1974? A. Up until the end of this year approximately 26,000.

JUDGE CHRISTENSEN: Until when?

THE WITNESS: The end of 1974.

Q. Up to the present time, have you ever laid off John Amorgianos for lack of work? A. As far as this part of -- as it came to the end of the year I found the work was getting so slow that I had to take a couple of days off with him.

Q. So there have been times when he has been laid off?

A. Right.

MS. KINNEY: Could you tell me when those were?

MR. TURCHIN: There were a couple of days.

JUDGE CHRISTENSEN: Toward the end of the year.

MS. KINNEY: Last year?

JUDGE CHRISTENSEN: '74.

MR. TURCHIN: I believe he is testifying now --

THE WITNESS: In '75.

Q. Directing your attention to a Friday evening, November 30, 1973, did anything occur with reference to your employees when they came in to get paid? A. November 30th?

220 Q. That was that Friday evening? A. Friday night.

As far as I can remember I came to the store that night to pay the men which Friday night was pay day.

They usually stand -- it is a small little store.

Q. What is the size of the store? A. My store?

Q. Yes. A. Roughly about 10 by 12 with a desk, you know, and a little material on the front.

Q. Is it a store front? A. Like a regular store front with a window and things in the window.

Q. Where were the men standing when you came in?

A. Close to the desk when they usually come when I give them their checks.

Q. Would you tell me what happened that evening?

A. I came in and my mail was on the desk, you know, and I opened it up.

I says, "What is this?"

And all of a sudden they all looked at me, "What is the matter?"

I says, "I have a letter here from the State Labor Board that the men in my shop, you fellows signed up with Local 3."

221 Q. Would you tell me then what occurred? A. John who was standing nearby, he said, "What?"

And I says, "Yes, this is what it is."

So he started to argue and fight with the boys, you know, getting into a big speech in Greek, I didn't know what was going on and what they were talking about.

"Wait a minute, take it easy, let's find out what it is all about" I said.

"John, explain to me what you are arguing, what has happened?"

He said, a little short while ago there was mention made between him and the boys on the job, they were talking about being approached by union people to join the union.

He had spoken to them and they said to him that they didn't join the union, that they didn't sign any pledge cards and now that I'm telling them I got a letter they did join and he is telling them it is like stabbing him in the back.

They weren't truthful to him.

I said, "Wait, don't get excited", I said, "Let's talk this over. Let's see what this is all about."

So naturally through him and with the other boys I started to come about this whole thing what is happening.

Q. Would you tell me to the best of your recollection the
222 questions you were asked and what took place? A. As far as I can remember the conversation was that -- I says, "All right, fellows, I understand. You want to join a union. I was a union man myself," I says, "The benefits are good, you better yourself and everything." I says, "But let's be honest with each other. You see what kind of shop I have. You know you have been with me a while, you know it is a small shop."

"I mean, how much work do I have."

Now, I had this little work and slowing down almost to nothing.

So now I said, "I would like to keep everybody here, but can I with things going down, jobs finishing off, there's nothing left actually."

"With the union you understand I have to pay their scale" and I says, "How can I keep everybody here and work? There's no work to take care of this."

Well, naturally they listened to me and what else could I say to them?

So --

Q. Now, did there come a time when you paid them, you gave them their checks? A. Yes. Well, after this conversation, I don't remember exactly what the words were.

I paid them their checks and I said, "Look fellows, I have to
223 go to the State Labor Board to find out what is going to happen here.

So let's forget what is happening here tonight. Everybody go home and over the weekend, so long fellows, and they all left the store except John.

Q. What did John say to you? A. I told John, "Look, clam down," I says, "There's no sense getting excited about this thing."

I says to him, "You know, you see things are getting bad. Things -- the jobs are finishing off. There's very little work John, so what can I do? I have to have -- I have no choice but I think I will have to lay these men off."

Q. What did John say about that? A. He says, "Okay, if we have to lay them off, good, that is it."

There's no work, I says, "What can I do?"

Not because of anything else. I just don't have the work and he says, "Goodnight" and got his pay and went home.

Q. Was there any further conversation with John?

A. Nothing at all.

Q. When is the next time that you saw these men? A. I got a call from John Monday to come to the store that none of the men showed up.

So I came to the store and then they showed up a little later.

224

I says, "What is happening, what is going on here?"

Now, one at a time naturally they all approached me and said John called everyone on Saturday and said, "We are laid off."

I says, "What are you talking about? He has no right to lay you off. I'm the boss. I didn't say anything about laying anybody off. I told all you fellows Friday when you were here we'll try to keep you here as long as we possibly can with other work and if there is no work we will have to let you off one at a time, whatever the work comes out to."

I says, "You are not laid off."

I says; "You leave your tools here and come back tomorrow and you will work just as long as I have enough work for you."

They all said "Okay, fine, Mr. Pollack" and they walked out of the store.

Q. And the next day did the people come to work?

A. They all came to work.

Q. Now, did there come a time when you laid these people off? A. Within the next two weeks it was coming down to where it was getting smaller and smaller, the amount of work I had and slowly they were laid off individually and one or two at a time.

Q. Were you obtaining any work, any new work of any size?

225 A. Nothing was coming in.

Q. During this period? A. Nothing at all. I was finishing off what I had.

Q. When you laid them off would you tell me approximately what work was left to be done by whomever was left? A. Well, the last two men that were with me finished off some work at the last job I had by Polymer and I had this other job with Attitudes in Wood, a little work had to be done.

Q. Who finished off the job at Polymer after these men left?

A. John and myself.

Q. About how many days would you estimate it took both of you to complete the Plymer work? A. Polymer job was a job where I couldn't work during the week because they didn't want us to stop to transfer the circuit breakers, the power from one place to another so we had to fill in a little bit at a time at their convenience, on a Saturday, later afternoon after the work was over with John and finished the entire job ourselves.

Q. Do you work with your tools also at your place? A. I always have.

Q. Are you working now? A. Yes.

226 Q. With your tools? A. Yes.

Q. Directing your attention to the work done by John Amorgianos, would you describe to me how the work was laid out for the men to do everyday or every few days? A. When I would see a customer, I would go on the job and see what the customer required, what type of work he wanted, what kind of job.

Then I would go to John or I would go to one of the other boys that were able to work by themselves and I would go to the job and say this is what I want and you complete the job the way I explained to you what to do.

Q. Who laid out the work? A. I laid out the work.

Q. Where you had a job that took an extended period of time, who laid out the work for the men as far as what work the men were to do? A. Whenever there was any question as to what any procedure whatever had to be done, John called me or the men called me on the phone.

They asked me or called me up and I would run down to the job.

If there were any problems they asked me about it or John would ask me about it.

Everything was done through me. I was the top mechanic. I knew what the work was all about.

227 Q. Did John ever lay out a job? A. Not to my knowledge.

Q. To your knowledge, could John read or write English?

MS. KINNEY: Objection.

JUDGE CHRISTENSEN: Overruled.

A. I would say very little.

Q. When you say very little, could he actually read something fully and understand it? A. Not at all. I mean --

MS. KINNEY: Objection, your Honor.

How could he know what John read or understood?

JUDGE CHRISTENSEN: I will let it in for what it is worth.

Q. Was John a Greek like the witnesses who testified here? A. Yes, absolutely.

When he came to me the first time I could just barely get through to him and slowly, you know, we were able to converse with each other.

As a mechanic I was able to explain electrically.

Q. Was one of John's duties to take the men to the places where they worked? A. At that time he is the one that had the car, a station wagon.

Q. Would he bring the men around to the various work sites?
228 A. Yes.

When I asked him to take them to certain jobs because he had the only means of conveyance outside of myself.

If I wasn't able to take it, if I was out looking for a job I asked him to take them.

Q. Did you have a truck in the business? A. No truck at all, my station wagon and his station wagon.

Q. Did anyone else in the place drive people around?
A. Some of the boys that came to work for me, they had private cars and I asked them if they would like to take, you know, go to a job and I could compensate them, I would pay them for the use of the gas as an added help to me because I had no truck.

It was a small little business.

Q. Did John ever have the authority to hire people?
A. Never.

Q. How would John handle someone who came in for a job who could not speak English? A. When I --

MS. KINNEY: I would like to object.

I would like to have a conversation where he was present or if it is just John and the individual have John testify.

229 JUDGE CHRISTENSEN: Your objection is sustained. Unless a foundation is laid that the witness saw and heard a conversation between an interviewee and John, I sustain the objection.

Q. Whenever John interviewed someone from work, were you in the shop? A. Yes.

Q. And you heard the testimony of the witnesses, Mr. Moustogiannis, Mr. Nastos and Mr. Handrinos with reference to discussing the job with John? A. The understanding was that when I called that agency and asked them to send a man they spoke to me and they asked me if there was anybody that spoke Greek, and I says, Yes, John, and when the men arrived with their card from the agency, to ask for John and John would interpret for me.

I was sitting there and they gave me the card.

I spoke with John and said to John "Ask them what little experience they had, if any and what they would like to earn", and he would give it back to me the conversation and we spoke a while.

Then I said, "Okay, John, let's try them. Let's break them in. Let's try to see what we could do with them", and John spoke with them and I said, "Report the next day" whatever it was.

Q. Could John hire without your authority? A. Never.

230 Q. Could John fire without your authority? A. Never.

Q. Did John ever fire anyone without your authority?

A. Never.

Q. With reference to the work that was to be performed could or would John change the work that you told the men to do without first speaking to you? A. No, he had to ask me because I'm the boss, I ran the jobs.

Q. What in effect was John's duties then?

As far as what he was to do. A. John was my mechanic, and his -- being the most experienced man in the shop he was able to

convey whatever I said to these people because of the language and also even though he wasn't able to speak English he was able to tell -- to see that they did the work what I wanted them to do.

Q. Is that the work that you laid out? A. That is the work that I laid out and if I went myself I laid out to a man and he did as I told him.

Q. Did John ever suspend any of your employees?

A. Never.

Q. Did he ever recall any of your employees? A. He had no right to.

Q. Did he ever promote or give anyone a raise without 231 first speaking to you? A. No, everything went to me. I was the final say so.

Q. In other words, if John would say to a man "You are going to get an additional salary" would you allow that to occur without John speaking to you? A. John -- the boys spoke to John because of the Greek language and in this particular instance they must have approached him and said they would like to earn a little more money and John came to me and said so and so would like a little extra money, is it possible?

I said, "All right, let's wait a little while and let's see how things are, and if it is okay I will let you and give them the raise, and he transmitted this information to them.

I was the one who said it is okay, I gave him the raise.

After all, it is my money and I gave it to him. He had no right to do anything without me.

Q. Did John work with his tools? A. Always.

Q. Did he do -- A. My mechanic.

Q. Did he do the same work that Al Rescigno did?

A. Always did the same work.

232 Q. So that it was John's primary function to work as a mechanic and do work as an electrical mechanic? A. Yes.

MS. KINNEY: Objection to the conclusionary nature of the question.

JUDGE CHRISTENSEN: Sustained.

Q. Would you tell me what John's primary work was?

A. John's primary work was my mechanic.

He was my A mechanic, my Journ -- he did all the work that had to be done on every job.

Q. That was working with his tools? A. That's right.

Q. Did John work in the office for instance? A. He had no reason to work in the office.

Q. Did he prepare bills? A. Didn't do nothing.

Come to the shop and just lay out material for the job and that is it.

Q. Referring to the night of Friday the 30th of November when you received a notice from the State Labor Board, did the men look at that notice? A. Those that were able to read English looked at it, yes.

The other ones couldn't read English so I don't expect them to understand what it was, but I held it up in front of me.

233 Q. Were there any names of men on that Notice? A. Not to my recollection.

Q. Were there any names on your desk? A. None.

Q. If a man wanted to take off would you be contacted concerning that? A. I was the final one, yes.

I was told he wouldn't come in the next day or whatever it was.

Q. Was that because you had to prepare work and had to know where the men were? A. Sure, they would come and ask me if they wanted to take off and I would know what to prepare for the next day.

MR. TURCHIN: I have no further questions.

MS. KINNEY: Could I have about a ten minute break?

JUDGE CHRISTENSEN: Sure. If you want to look at the payroll book, perhaps you will make that available to counsel.

MR. TURCHIN: Sure.

(Short recess taken.)

JUDGE CHRISTENSEN: On the record.

Proceed.

CROSS EXAMINATION

* * * *

237 Q. (By Ms. Kinney) I believe it was the Monday that you testified, December 1st that they didn't come; is that right?

Then you said they came back on Tuesday.

MR. TURCHIN: May I know where this line is going because clearly the problem we face is that their own witness testified they worked on those days.

MS. KINNEY: They did not.

MR. TURCHIN: They did, yes, they did.

JUDGE CHRISTENSEN: They didn't. They came to get their tools on Monday, December 3rd and they were not called until the middle of the week, about the 5th to come and work on Friday, December 7th.

That was the testimony.

MS. KINNEY: That is what the payroll records indicate.

Let the record show for the payroll week ending December 7th there is only a record of payment for one day.

JUDGE CHRISTENSEN: Does it show December 7th?

MS. KINNEY: That is Friday, right.

JUDGE CHRISTENSEN: Does counsel --

MR. TURCHIN: If that is what it shows that is the record.

JUDGE CHRISTENSEN: You can take a look.

Rather than put it in evidence you can stipulate.

238 MR. TURCHIN: Yes, the record would show that it was a Friday, that is correct, rather than the Tuesday.

JUDGE CHRISTENSEN: The parties so stipulate?

MR. TURCHIN: The parties so stipulate.

JUDGE CHRISTENSEN: I accept the stipulation.

MR. TURCHIN: I will go further, would you stipulate as to the balance of the payroll records that the week after they worked a full week?

MS. KINNEY: No, only Krellenstein and Rescigno as I understand.

MR. TURCHIN: That is correct, Rescigno and Krellenstein.

For the week of the 21st there was Rescigno and Krellenstein again, that is correct.

* * * *

Q. What did you say to the Board agent when you gave your 239 statement with respect to your solicitation of work? A. What did I say to the Board agent?

Q. To Mr. Hoffman?

When he took your statement with respect to your plans for solicitation of work? A. That I would go out and try to look for work.

If I remember also I made a statement to him that I didn't think that things were getting so that I may not even want to do more work.

I may want to just slowly cut down my business because of health and other things.

Q. I want you to take a look at the statement and see if this is your signature at the end of the statement? A. Yes.

Q. Did you read the statement before you signed it?

MR. TURCHIN: I would object because I think she is going beyond the scope of the direct.

I think -- I don't think it is material or relevant.

JUDGE CHRISTENSEN: Impeachment.

MR. TURCHIN: As to what?

JUDGE CHRISTENSEN: As to prior inconsistent statements.

MR. TURCHIN: There was no inconsistent statement.

JUDGE CHRISTENSEN: I don't know until this is developed.

MR. TURCHIN: The inconsistent statement is on the basis of what she asked if he read, stating to the Board agent and I indicate to you, sir, that not part of the direct and goes beyond the scope.

240

JUDGE CHRISTENSEN: It is laying a foundation for impeachment of a matter that was explored on direct.

The objection is overruled.

The statement may be shown to the witness and then questions shall be answered.

Q. Now, would you read this paragraph, please, starting with this, to yourself, please. A. Do you want me to read it out loud?

Q. You can read it out loud. A. "My present intention is to continue with one employee and not to solicit additional work but simply to work on a limited basis for physical reasons and avoid responsibilities and headaches."

Q. Was that statement true when you made it? A. Was it true?

Q. Yes. A. Well, I swore. What can I tell you?

I swore to the man that investigated me.

Q. So you didn't go out looking for any more business?

A. I didn't?

Q. I gather from what you said here? A. I may, don't recall, I may have suddenly changed my mind. I don't know.

I have to make a living, I have to sustain myself so I just can't simply throw the towel and say I'm not going to be in business any more.

I have responsibilities so the statement -- it is not a question of whether I swore to that saying I didn't state that is what I am absolutely going to do.

Q. Did you go out and solicit business? A. What?

Q. Did you go out and solicit business after that?

A. People usually call me.

Sometimes people call me on the phone, asked me to do job, telling me to come and give them estimates.

It wasn't a question of knocking on doors.

I didn't do this.

Q. Did you work 8 hours a day doing manual labor?

A. At times, yes.

Q. How often? A. As often as it was necessary.

Q. Once a week? A. No, no. I worked on all the jobs, most of the jobs except there was reasons for me to go to look at a job or go somewhere to estimate a job.

Q. Did you work doing manual work 8 hours a day every day or did you do it like 3 days a week or can you give us some idea?

A. My business wouldn't be able to exist if I stood on a job 8 hours a day.

242 Q. How often did you work with the men, is what I'm trying to understand. A. On the average sometimes 3, 4, 5 days a week.

Q. That is all day? A. What?

Q. All day? A. If I had to be on the job I stayed there all day.

Q. Who did you work on the job with all day? A. With whom?

Q. Yes. A. Sometimes was with John on the job all day, sometimes it was Al, sometimes it was with the other boys.

You pinpointing me to be there every minute.

Sometimes I went out and came back again.

I wasn't there every minute.

Q. What did you do when you were at the job?

Did you watch the job or did you work? A. Beg your pardon?

Q. What did you do when you were at the job? A. I did

the job.

I went, pulled the cables, I was cutting wires, doing this or doing that.

I was laying out the job.

Q. I would like you to read this paragraph of your statement,
243 please, out loud. A. "For example, during the fall of 1973 I had more employees on the job than I ever had before. I was also on the payroll with the employees and I worked right along side of them everyday, 8 hours per day. Occasionally I left the job for personal reasons, but not to solicit business since I already had enough work to keep me busy."

Q. Thank you.

Is that statement true? A. At times, yes.

If I didn't work 8 hours a day it didn't mean I worked everyday eight hours.

Q. What did it mean? A. It means I worked 8 hours when the job required I stay on the job 8 hours.

Q. How many times did you spend all day working with Thomas Nastos? A. Not with Thomas Nastos, because Thomas Nastos had enough experience to stay by himself.

Q. Did you ever work all day with Gus Moustogiannis?
A. It is hard for me to remember which one I stayed.

You are pinpointing me.

Moustogiannis, after I showed him the job, he was able to.

Q. Who did you work with besides John? A. I was
244 with Steve Krellenstein, I was with another job, Eugene Moretti. Sometimes I stayed with Al on the job.

If there was a service job, I stayed with him putting up the pipes and everything else.

Sometimes I had George Handrinos with me on jobs too, I stayed with him.

Q. What did you do, watch their work and tell them what to do? A. I worked along, I'm a mechanic.

They were my helpers.

Q. Would you say on an average week you spent 80 percent of your time doing manual work?

MR. TURCHIN: I would think -- I haven't objected, but I think we are just pursuing a line of inquiry and I think the answer has been made and I think again we are going completely off what the areas are that are relevant.

JUDGE CHRISTENSEN: That line has been exhausted, hasn't it, counsel?

MS. KINNEY: Trying to find out what Mr. Pollack did during the day, that's all.

Sometimes he worked on the job and sometimes he didn't.

Q. Did you ever talk to your employees who were of Greek nationality? A. Did I ever do what?

Q. Did you ever talk to Gus Moustogiannis or George Handrinos
245 or Thomas Nastos? A. Talk to them?

Q. Yes. A. About what?

Q. Did you ever talk to them, ever have any conversations? A. If they came into the store, whatever little language they had they tried to convey to me, you know, whatever words they could, a little bit.

Q. When you worked with George on a job did you talk to him? A. Sure I spoke to him.

It was a little difficult for me to convey to him just what I wanted.

A lot of times he did things I just couldn't make him understand. I was a little exasperated and I finally got through.

I want this and this and he helped me pull calbe or whatever it was.

Q. What language did you speak in? A. What language did I speak? Very little English.

Electricians were able to convey a message with going into a language thing.

He had enough, just enough knowledge of what a piece -- I would speak to him in that manner.

Q. I believe you testified earlier you asked the employees 246 on this Friday afternoon about the union; is that right?

A. Friday night.

Q. And you were surprised getting a letter from the New York State Labor Department? A. Yes, Ma'am.

Q. Is this the letter you got, a copy of the letter you got, I should say? A. Yes, this was the letter I got.

Q. Look at the bottom, did you get that too? A. This, no.

Q. You didn't get that? A. No. That came later. This was the letter that came that time.

MS. KINNEY: Shall I get this remarked as General Counsel's Exhibit 3 for identification.

(Whereupon, above referred to document was received and marked General Counsel's Exhibit 3 for identification, of this date.)

MS. KINNEY: At this time I will offer General Counsel's Exhibit 3 into evidence.

MR. TURCHIN: No objection.

JUDGE CHRISTENSEN: It shall be received.

(Whereupon, General Counsel's Exhibit 3 heretofore marked for identification, was received into evidence, of this date.)

247

Q. Turning to your affidavit again, Mr. Pollack, would you read this paragraph out loud, please, starting with the "I".

A. "I never at anytime talked about the union with any of my employees, including Mr. Amorgianos and I never asked or instructed him to tell them anything on my behalf about any union. I never asked him to ask them anything about any union or to find out whether or not they were signed up with any union or were taking part in any union activity."

Q. Was that statement true when you made it? A. Yes.

Q. I thought on Friday you asked employees about the union?

A. That is the day I asked them.

Q. This statement is dated March 19, 1974, so this would be after the conversation on Friday, would it not? A. The investigator asked me what happened, if I had spoken to them.

Q. What does it mean when you say, "I never at anytime"?

A. What?

Q. What did you mean when you said, "I never at anytime talked about the union?"

MR. TURCHIN: Let me indicate again that the statement is a statement in the language of an investigator.

The investigator wrote it out.

248

The investigator was writing the statement on the basis of a conversation with the witness, so clearly if she is indicating that this was written by the witness, that is not a fact.

MS. KINNEY: The witness has testified that he read the statement before he signed it and he swore to it and I'm trying to --

JUDGE CHRISTENSEN: I don't think we need belabor it.

The witness testified he did make statements concerning joining Local 3 on November 30th.

That stands on the record.

249

REDIRECT EXAMINATION

250

JUDGE CHRISTENSEN: You then told John Amorgianos to conduct the interview because of your lack of any knowledge of Greek; is that correct?

THE WITNESS: Yes.

JUDGE CHRISTENSEN: And your testimony is that each time each of these men who testified here was interviewed, and I'm talking about Handrinos, Nastos and Moustogiannis, that was the procedure followed?

THE WITNESS: Yes.

JUDGE CHRISTENSEN: Now, each time I understand you were present during the interview?

MR. TURCHIN: I think the testimony was not that he was present but that John would speak to him about it.

That is John would speak to him.

MS. KINNEY: I thought the testimony was --

JUDGE CHRISTENSEN: That's what I'm trying to clarify.

MR. TURCHIN: I am objecting because I think it incorporates facts that are not in evidence.

MS. KINNEY: That is not my understanding.

My understanding is what the Judge said.

JUDGE CHRISTENSEN: I'm asking him if this is so.

251 I am not stating to him that that is so.

MR. TURCHIN: But I'm indicating you are incorporating facts which I don't believe are in evidence.

JUDGE CHRISTENSEN: I'm going to deny your motion, and I'm going to repeat my question.

MR. TURCHIN: I will withdraw the objection.

JUDGE CHRISTENSEN: When each of these three men I just named were interviewed by Amorgianos were you present during the interview?

THE WITNESS: I stated before I can't remember what I said, but the point is that when it was final.

In other words, I may have never been in the store when they came from the agency, but John was in the store and they would have referred to him, not to me, because I couldn't speak the language, so John had to talk to them.

They they had to -- he had to finalize it with me and to say whether I approve these people to come to work or not, so I had the final say.

It wasn't that he said "You can go to work," without my knowledge.

I was the boss and the one who makes out the payroll and the one who pays these people to say whether I could use them or not.

JUDGE CHRISTENSEN: So your answer is you weren't present at the interviews each time?

252 THE WITNESS: That's right.

* * * *

254 JUDGE CHRISTENSEN: Now, there was testimony here by
255 one of the witnesses, Mr. Rescigno, that you took a vacation
in Florida and that John ran the business while you were away, is
that accurate testimony?

THE WITNESS: Well, let me put it to you this way, when I knew I wasn't feeling well, and I was going to go away to Florida for a little rest, at that time I had a job going, I can't pinpoint exactly which job I had going and I know with John's knowledge and his capabilities, that he was able to proceed right along with the job as he did during the time I was away.

I mean, after all, he was with me longest, I had all this confidence in the man, it wasn't a question of telling him, go around and look for jobs and do other jobs and do whatever you want on your own.

If I felt that I couldn't leave him with the boys to work, I wouldn't have allowed myself to do this.

I would have closed the shop, but being my mechanic and these are helpers, like my right arm, I let him just finish off the job until I came back.

I was only gone for a week, so the business didn't go out.

* * * *

258 JUDGE CHRISTENSEN: You testified that your volume in business in '73 was \$75,000 and '74 was 26,000.

THE WITNESS: Yes.

JUDGE CHRISTENSEN: What was in '72 and '71, if you recall?

THE WITNESS: If I recall with two men that I had when I started into business my average business at that time I had 12,000, 16,000, you know, the period of time.

* * * *

259

REDIRECT EXAMINATION

Q. (By Mr. Turchin) Did you see the work performed by each of these men on the job? A. Yes.

Q. When they came in and asked for a raise, did you make an independent decision as to whether or not they would get a raise or would you rely on John to tell you whether they should get a raise?

MS. KINNEY: Objection to the leading nature of the question.

JUDGE CHRISTENSEN: Sustained.

Try to ask it more direct.

Q. What would happen when a man asked for a raise?

Who would make the decision? A. I would make the final decision.

Q. Did John ever tell you to give a man a raise where you did not want to give a man a raise? A. No.

Q. Did John ever tell you to give a man a raise?

MS. KINNEY: Objection.

This question has been answered.

JUDGE CHRISTENSEN: Overruled.

He may answer.

THE WITNESS: Answer the question?

JUDGE CHRISTENSEN: You may answer.

260 A. John never told me to give a man a raise.

Q. Is it a fact that John just relayed a request for a man for a raise? A. That's right, the man asked him as I previously stated asked him if I could possibly give him more money, earn more money.

The message was relayed to me. I mulled over it, thought about it and I came over with my own decision.

Q. Did there come a time when Rescigno worked without supervision? A. Yes.

Q. Just as John did? A. Yes.

Q. So that when the Judge asked you about John working that week while you were away, did Rescigno do the same thing, work for a period of time without you telling him what to do? A. Yes.

Q. Was that because Rescigno also had the experience and could do the job on his own? A. Yes.

Q. It is a fact, basically, isn't it, that that is what a man or mechanic does? A. Yes.

* * * *

262 JUDGE CHRISTENSEN: On the record.

263 In an off the record discussion, counsel Respondent stated he wishes to place into evidence information concerning his position before the State Labor Relations Board, either by way of representation of counsel or, if necessary, by sworn testimony.

I stated I would take it in eitherform.

Counsel for the General Counsel stated she will accept a representation of counsel as to what transpired subject to any questions counsel for General Counsel may have as to the statement made.

You may proceed.

MR. TURCHIN: The union filed a petition in the State Labor Board concerning this Employer and an informal conference was held at which conference the issue of jurisdiction was raised by the Employer.

In a normal proceeding where the issue of jurisdiction is raised a hearing is held to take testimony.

The union withdrew its petition in the State Labor Board and then filed a Petition in the National Board.

Thereafter the National Board, the National Labor Relations Board dismissed the Petition and Complaint, at which time the Union again filed charges with the State Labor Board.

When the National Labor Relations Board reinstated the Petition and charges the union then withdrew the charges filed in the State Labor Board.

264 The purpose of this statement is to show that the union had recourse at all times to a forum where it could have litigated this issue if it so desired.

MS. KINNEY: I would only state that this review is without the benefit of Norman Rothfeld who was present, the Counsel for the Charging Party, who was present at that hearing and the statement obviously is a self-serving statement, no more.

*

*

*

*

*

Whereupon,

RALPH POLLACK,

having been previously duly sworn in by Judge Christensen, resumed the stand and testified further as follows:

REDIRECT EXAMINATION

Q. (By Mr. Turchin) During 1973 how did you get your business? A. My business primarily came from telephone calls and recommendations.

265 Q. During 1974 how did you get your business? A. In the same manner, always through a telephone recommendation.

Q. Did you turn down any business in 1974 through telephone calls and recommendations? A. No.

MR. TURCHIN: That is all.

JUDGE CHRISTENSEN: Cross examination?

MS. KINNEY: No.

JUDGE CHRISTENSEN: You are excused.

(Witness excused.)

JUDGE CHRISTENSEN: Mr. Turchin?

MR. TURCHIN: At this time the Employer rests, and the Employer would renew its motion to dismiss.

JUDGE CHRISTENSEN: Same ruling.

MS. KINNEY: I would like to call a few witnesses in rebuttal.

Gus Moustogiannis.

Whereupon,

GUS MOUSTOGIANNIS

having been sworn by Judge Christensen, took the stand and testified as follows:

JUDGE CHRISTENSEN: Be seated.

Give the Reporter your name and address, please.

THE WITNESS: Gus Moustogiannis, 31 Elm Street, Westfield, New Jersey.

266

DIRECT EXAMINATION

Q. (By Ms. Kinney) Did you formerly work at Pollack Electric? A. Yes.

Q. How did you get your job at Pollack Electric? A. From an agency office.

Q. What happened? A. I go over there look for a job. The man over there told me "Give me your name and telephone" and he say "Don't come everyday here. If I have something I call you."

But after a few days they call me and John --

JUDGE CHRISTENSEN: John who?

THE WITNESS: Him, Amorgianos.

"Your name Gus?"

I says yes.

"Tell me you electrician?"

"I'm electrician, yes."

He says, "You looking to come to work tomorrow?"

Say, "Yes, I like to come to work."

He give me the address. I don't remember the number, his address, Park Avenue.

He told me "I have to wait for you downstairs in the lobby. My name is John," he told me. Okay.

267

Next day, the day Wednesday when I come over there, I find John.

Say, "Okay, come upstairs, I give you the job."

So I start to work.

"You hav to do that, you have to do that".

The next day when Mr. Pollack come over there George told me, you know, who the boss? I say, "No, I don't know who is the boxx. I know that John."

"This is the boss, Mr. Pollack."

Mr. Pollack no tell me nothing. No ask me. I don't ask him nothing, and the Friday when I'm going to take the pay Mr. Pollack say to John, "How much I give to Gus?"

John say 2.50, give 2.50.

Q. And is that what you were paid? A. Yes, I start two fifty.

Q. Did you ever ask for a day off? A. Yes, one day I asked John and he give me.

Q. Did you get the day off? A. Yes.

MS. KINNEY: No further questions.

JUDGE CHRISTENSEN: Did he give it to you right then and there or did he check first?

You asked for the day off.

THE WITNESS: Yes, I asked John.

JUDGE CHRISTENSEN: Did he say yes or no right then?

THE WITNESS: I say, "John, I want tomorrow don't come."

268

He says, "Okay, don't come tomorrow."

JUDGE CHRISTENSEN: Right then?

THE WITNESS: Yes, he say, "Don't come tomorrow."

CROSS EXAMINATION

Q. (By Mr. Turchin) You went to Pollack Electric before John called you? A. No.

* * * *

269 Q. One more thing, when you came to the job on Park Avenue 270 wasn't Mr. Pollack there? A. No.

Q. Didn't you meet Mr. Pollack on Park Avenue that day?
A. No, the first day, no.

Only John wait for me in the lobby.

Q. Don't you remember testifying that somebody asked you who is the boss and they pointed out Pollack? A. The next day.

Q. That is the next day? A. The next day, George told me that he is the boss.

Q. You mean you don't remember seeing Mr. Pollack there that day? A. The first day, no, not there. I remember that.

Q. You don't know if he was there, though, do you? A. I remember, I'm sure that he is not.

Q. How are you sure he wasn't there? A. I'm sure, because I know Mr. Pollack now.

Q. But you didn't know him then so you wouldn't know if he was there then? A. John said, "Wait for me in the lobby".

Q. I understand you met John, but you don't know, were you with John all day? A. Yes.

271 Q. You never left John's side? A. When I start John worked too when I start for Mr. Pollack, Park Avenue.

John worked too, but the first day I don't see Mr. Pollack.

Q. I understand, but you don't know if John saw Mr. Pollack? A. I'm not sure.

Q. You don't know? A. I'm not sure of that.

Q. If I were to tell you Mr. Pollack was there on the job that day, you wouldn't know whether he was there or not; isn't that a fact?

A. Mr. Pollack, he is not there.

Q. How do you know? A. I don't see Mr. Pollack.

Q. I understand you didn't see Mr. Pollack.

How big is the building?

JUDGE CHRISTENSEN: Pardon me.

MR. TURCHIN: No further questions.

JUDGE CHRISTENSEN: The witness said he didn't see him.
You established that.
That doesn't establish whether or not he was there.
All right.

* * * * *

272 MS. KINNEY: George Handrinos.

JUDGE CHRISTENSEN: You are the same Mr. Handrinos
who testified earlier and you understand you are still under oath?

MR. HANDRINOS: Yes.

Whereupon,

GEORGE HANDRINOS

having been previously sworn, resumed the stand and testified
further as follows:

CONTINUED EXAMINATION

Q. (By Ms. Kinney) When you worked at Pollack Electric
did you ever come in late? A. Once, only one time.

Q. What happened that day? A. John send me home.
I was -- it was, if I remember exactly, one or two weeks
after when he send home Al.

Al came once late and he sent -- John sent Al home.
After one or two weeks I come late too and he send me home.
At the time when I was going out from the shop, Mr. Pollack,
he was coming from his house -- I don't know from where and he
asked me where I'm going.

273 I saying I am going home. He say what is happened?
I say, I come a few minutes late and John send me home.
He don't say to me nothing and I left. At the time when I was
living, when I was working, walking to the train, the guys when they
was going to work, they was going to work in place close to my house,

so they picked me up and they take me close to my house and I walked to my house.

MS. KINNEY: No further questions.

MR. TURCHIN: I have no questions.

JUDGE CHRISTENSEN: You are excused.

(Witness excused.)

MS. KINNEY: Eugene Moretti.

JUDGE CHRISTENSEN: You are the same Mr. Moretti who testified earlier and you understand you are still under oath.

MR. MORETTI: Eugene Moretti, yes, sir.

Whereupon,

EUGENE MORETTI

having been previously duly sworn, resumed the stand and testified further as follows:

CONTINUE EXAMINATION

Q. (By Ms. Kinney) Mr. Moretti, were you ever with John Amorgianos when he made an estimate? A. Yes, I was.

274 Q. Would you tell us about that please? A. It was the later part of September, 1973.

We were working on another job at 81st Street and Bay Parkway and I believe it was an emergency and we went to a restaurant, a Chinese Restaurant on 65th Street on the corner of Bay Parkway.

Con Edison was there. The service blew up under ground. It was underground service.

Most of it had gone into the pipe and exploded, and the owner of the whole place, the store and the apartment building above it, we sat down in the Chinese Restaurant and John was sitting next to me, to my right and a lady sitting across the table and the lady was asking how much would it cost for this, for this and for this.

John gave a price and later I worked on that job.

Q. What did the lady say to him after he gave her the price?

A. She was persistent, she wanted to know, \$110 or \$300 how much work would he get done, so I worked on the job at a later date.

Q. What did John say to her after she wanted to know more information? A. I guess -- I believe he said he would do the job. I worked on it later.

* * * *

275 MS. KINNEY: Albert Rescigno

JUDGE CHRISTENSEN: You are the same Mr. Rescigno who testified earlier and you understand you are still under oath?

MR. RESCIGNO: Yes.

Whereupon,

ALBERT RESCIGNO

having been previously duly sworn, resumed the stand and testified further as follows:

* * * *

279 JUDGE CHRISTENSEN: * * * Who told you what you were going to do while Mr. Pollack was on vacation?

THE WITNESS: John Amorgianos.

* * * *

288 MS. KINNEY: General Counsel recalls Albert Rescigno.

Whereupon,

ALBERT RESCIGNO

having been previously duly sworn, resumed the stand and testified as follows:

JUDGE CHRISTENSEN: You are the same Mr. Rescigno who testified earlier and you understand you are still under oath?

THE WITNESS: Yes, sir.

FURTHER REDIRECT EXAMINATION

Q. (By Ms. Kinney) Mr. Rescigno, would you tell us the circumstances of your departure for a month from Pollack Electric? A. Yes, Ma'am.

The circumstances of my departure had nothing to do with being late.

The circumstances of my departure is I had an argument over a radio with John in the presence of Eugene Moretti.

289 Q. What happened? A. I went home that day.

John told me to go home. I went home.

Then, not the next day, but the day afterwards I came back and I told Ralph that if he cannot -- I asked him, I says, is there a possibility of keeping John out of my way?

In other words, stay away from me, because everytime I'm with John I have an argument with the man.

He said to me it is not possible for him to do that because John was his foreman and I said well, if it is not possible to do that, then I'm afraid I can't work for you any more.

That was the conversation.

Q. And then when did you come back to work at Pollack?

A. Approximately a month later.

* * * * *

290 Q. (By Mr. Turchin) Did you ask Mr. Pollack back your job or did he call you? A. He didn't call me and I didn't ask him.

I had borrowed a sander from him, an electric sander.

I was putting up cabinets in my house when -- before this incident happened.

When I quit I still had the sander at my house.

I finished with it and I was returning it to the shop that day and Mr. Pollack asked me what I was doing at the time and I told him, the place I was working at was slow.

He asked me if I would like to come back to work for him and I said fine.

* * * *

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,)	
)	
Petitioner,)	
v.)	No. 75-4264
POLLACK ELECTRIC COMPANY, INC.,)	
)	
Respondent,)	
)	
)	
)	
)	

CERTIFICATE OF SERVICE

I hereby certify that I have served by hand (by mail) two copies of the
APPENDIX in the above-entitled case, on
the following counsel of record, this 23 day of March 1976.

N. George Turchin, Esq.,
253 Broadway
New York, New York 10007

Elliott Moore, Esq.,
Deputy Associate General Counsel
National Labor Relations Board
Washington, D.C. 20570

CASILLAS PRESS, INC.

Victor Glavin
1717 K Street, N.W.
Washington, D.C. 20036
Telephone 223-1220

Subscribed and Sworn to before me this